THE OMBUDSMAN
HONG KONG

20 Years On

ANNUAL REPORT OF

THE OMBUDSMAN

HONG KONG

2009

Office of The Ombudsman, Hong Kong

Vision

To ensure that Hong Kong is served by a fair and efficient public administration which is committed to accountability, openness and quality of service

Mission

Through independent, objective and impartial investigation, to redress grievances and address issues arising from maladministration in the public sector and bring about improvement in the quality and standard of and promote fairness in public administration

Functions

The Ombudsman should serve as the community's watchdog to ensure that:

- Bureaucratic constraints do not interfere with administrative fairness
- Public authorities are readily accessible to the public
- Abuse of power is prevented
- Wrongs are righted
- Facts are pointed out when public officers are unjustly accused
- Human rights are protected
- The public sector continues to improve quality and efficiency

Values

- Maintaining impartiality and objectivity in our investigations
- Making ourselves accessible and accountable to the public and organisations under our jurisdiction
- According the public and organisations courtesy and respect
- Upholding professionalism in the performance of our functions

Performance Measures

- Speed of case work
- Complainants' level of satisfaction with case handling
- Redress obtained
- Recommended improvement measures committed to and/or implemented
- Non-repetition of complaints



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History in Brief

Year	Date	Event
1988	20 July	The Commissioner for Administrative Complaints ("COMAC") Bill was passed by the Legislative Council ("LegCo")
1989	1 February	The COMAC Ordinance was enacted
		First Commissioner Mr Arthur Garcia, JP assumed office
	1 March	The Office of COMAC became operational with staff seconded from Government
	15 November	COMAC became a member of the International Ombudsman Institute ("IOI")
1993	21 July	Legislative review completed, the COMAC (Amendment) Bill was introduced into LegCo
1994	1 February	Second Commissioner Mr Andrew So, JP assumed office
	24 June	The COMAC Ordinance was amended: • to enable the public to lodge complaints directly, instead of by referral from LegCo Members • to extend the jurisdiction to some major statutory bodies • to empower the Commissioner to publish anonymised investigation reports • to empower the Commissioner to initiate direct investigation
	30 June	Advisers were appointed to provide expert advice and professional opinion
	1 July	Chinese title of the Commissioner was changed to「申訴專員」and the Office to「申訴專員公署」







1. Feb 1989 – First Commissioner Mr Arthur Garcia, JP **2.** Jun 1994 – Appointment of advisers
3. Oct 1995 – Second Commissioner Mr Andrew So, JP at IOI Symposium

Date	Event
1995	
1 March	Jurisdiction was extended to investigation into alleged breach of Code on Access to Information
24-26 October	The Commissioner hosted the 15th Australasian and Pacific Ombudsman Conference and the International Ombudsman Symposium
1996	
1 March	Non-official Justices of the Peace ("JPs") were enlisted in a JPs Assistance Scheme
16 April	The Ombudsman's Office participated in the establishment of the Asian Ombudsman Association ("AOA") and became a founding member
12-13 June	First Complaint Management Workshop for public officers was organised
5 September	Resource Centre was opened
24 October	The Ombudsman was elected to the Board of Directors of the IOI
27 December	English titles were changed to "The Ombudsman" and "Office of The Ombudsman"
1997	
1 April	Mediation service was launched as an alternative dispute resolution method
25 July	The Ombudsman's Awards were introduced to acknowledge public organisations handling complaints positively
1998	
8 May	The Ombudsman was elected Secretary to the AOA





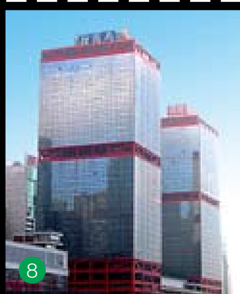


4. Jun 1996 – 1st Complaint Management Workshop **5.** Sep 1996 – Opening of Resource Centre
6. Jul 1997 – 1st Ombudsman's Awards Presentation Ceremony

History in Brief

	Date	Event
1999	1 April	Third Ombudsman Ms Alice Tai, JP assumed office
	22 July	The Ombudsman's Awards were extended to acknowledge public officers' contribution towards better quality services
2000	27 July	The Ombudsman's Awards were further extended to acknowledge public officers handling complaints professionally
	2 November	The Ombudsman was elected to the Board of Directors of the IOI
2001	28 March	Telephone complaint service was introduced
	19 December	The Ombudsman (Amendment) Ordinance 2001 came into operation: • to establish The Ombudsman as a corporation sole with full powers to conduct financial and administrative matters • to empower The Ombudsman to set terms and conditions of appointment for staff • to adopt systems and processes separate from Government
2002	6 September	Office moved to permanent accommodation at Shun Tak Centre in Sheung Wan
	16 October	The Ombudsman was elected Secretary to the IOI


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7. Jul 1999 – Third Ombudsman Ms Alice Tai, JP at The Ombudsman's Awards Presentation Ceremony

8. Sep 2002 – Permanent Office at Shun Tak Centre **9.** Nov 2003 – Training in mediation

10. Oct 2005 – Signing of "Memorandum of Administrative Arrangements"

Date	Event
2003	
November	Training in mediation was provided for public officers to promote such service among public organisations
2004	
1 April	Ms Alice Tai, JP started her second term (2004 – 2009) as The Ombudsman
10 September	The Ombudsman was re-elected as Secretary of the IOI
13 December	With the departure of the last civil service secondee, this Office was staffed by a workforce entirely appointed by The Ombudsman under The Ombudsman Ordinance
2005	
24 October	A "Memorandum of Administrative Arrangements" was signed between the Director of Administration and The Ombudsman to set out the general principles and guidelines governing the administrative arrangements for this Office
28 November – 1 December	The Ombudsman hosted the 9th AOA Conference
2008	
5-8 November	The Ombudsman hosted the Board of Directors Meeting of the IOI
2009	
9 March	Government announced the appointment of Mr Alan Lai Nin, GBS, JP as The Ombudsman for the next five-year term starting 1 April 2009



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11. Nov 2005 – 9th AOA Conference
12. Nov 2008 – Board of Directors Meeting of the IOI
13. Mar 2009 – Fourth Ombudsman Mr Alan Lai Nin, GBS, JP



2009 is a milestone in our history: it marks two decades of ombudsmanship in Hong Kong. This happens to coincide with the end of my ten-year service in this Office.

Over the years, the endeavours of our colleagues have borne fruit. Government departments and public bodies have been inspired to develop a positive complaint culture. They are now generally more responsive to public complaints, more efficient in rendering services and more receptive to suggestions for improvement. Over 95% of our post-investigation recommendations have consistently been accepted for implementation. Some would even initiate improvement measures upon our inquiries. Increasingly, they see our investigation as a quest for facts and our conclusions, statements of fairness and objectivity.

As I bow out, let me share with you some reflections on issues of concern.

Inadequate Cooperation and Coordination

Since 2002, I have repeatedly focused on the compartmental mentality and "minimalistic approach" among some Government departments. The inability, or reluctance, to transcend departmental boundaries and work together in cooperative partnership, or to take the extra step towards better public service, remains apparent still.

Meanwhile, to the public, the Administration is just one government – one single entity from which they expect good governance and quality service overall. This will always be the public expectation and quite rightly so.

Need for Review of Legislation

At times, persistent efforts by departments, whether individually or in unison, are hampered by outdated or ineffectual legislation. Our direct investigation on street management has brought this into sharp focus. As an example, the rampant proliferation of on-street promotional activities is largely due to a lack of legislation against hawking of services.

It is time for the Administration to recognise that changes in many facets of community life signify the need to update policies and

legislation for proper administration. When situations such as on-street promotional activities become intolerable for both the community and the administering departments, it is time to grapple with those systemic issues and forge a way forward for improvement.

Problems with Access to Information

In my last Review, I noted signs among some Government departments of misunderstanding or even ignorance of Government's Code on Access to Information. The Code, introduced in 1995, requires departments to be as open, transparent and accessible with Government-held information as possible to the public. Clearly a commendable directive!

Regrettably, it is now over 13 years since implementation and some departments are still refusing requests for information without due regard to the Code.

We have accordingly initiated a direct investigation into the adequacy and effectiveness of the administration of the Code.

Poor Logistical Planning

I have suggested that the Administration place importance on adequate resources and support for front-line customer services. Examples are telephone enquiry hotlines of departments particularly exposed to public calls for answers or assistance. The community cannot be expected to accept shortfall in resources as a reason, or even excuse, for inefficiency or poor service.

Implications of Outsourcing

For efficiency and cost-effectiveness, Government is increasingly outsourcing services. However, departments remain ultimately accountable for services contracted out. They must be mindful of the need to closely monitor contractors' performance, guiding and supporting as necessary, as well as managing public expectations.

Departments should also guard against indiscriminate or excessive outsourcing. I realise that departments are often in "no-win" situations and that public expectations of improved services are not matched by increase in resources. In such circumstances, outsourcing can provide expedient relief. However, unless managed well and monitored properly, this could lead to loss of expertise and experience within the service itself, thereby affecting the overall quality of administration.

Accountability

I have oft spoken on the concept of accountability. Services can be outsourced and authority may be delegated; but not accountability. This is the hallmark of a responsible and responsive government.

This accords with the fundamental principle underlining the Accountability System for political appointment since 2002 and I quote:

> *"2.2 Principal officials are responsible for their respective portfolios designated to them by the Chief Executive and lead the executive departments within their respective portfolios. Principal officials are responsible for formulating, explaining and defending government policies as well as canvassing support from the public and the Legislative Council. They are accountable to the Chief Executive for the success or failure of their policies.*
>
> * * *
>
> *2.6 Politically appointed officials shall be bound by and collectively responsible for the decisions taken by the Chief Executive in Council."*
>
> ~ *Code for Officials under the Political Appointment System* ~

Public administration is essentially a cooperative effort with public officers serving the public together from their different posts. However, in the event of a problem or mishap, our community would expect the top officials to bear the political responsibility for the action or inaction within their respective policy portfolios. Such expectations have become particularly acute with the launch of the Accountability System. Nevertheless, many people do not understand the underlying principle of responsibility at different levels as stated in the Code, i.e. "collective responsibility" and the "principal officials accountability". The Administration may well need to explain more fully these principles of accountability and the determination of responsibility.

Jurisdictional Review

The powers of The Ombudsman and, correspondingly, the effectiveness of the Office in monitoring public administration are constrained by some provisions of The Ombudsman Ordinance. Based on our operational experience and on practices overseas, I completed a jurisdictional review and submitted a report in two parts to the Administration in 2006 and 2007.

There, I have re-examined the criteria for including public bodies in The Ombudsman's purview and recommended a few additions. I also revisited the legislative intent for some of the restrictions on investigative powers.

Furthermore, I presented for the Administration's reference the trends for development in ombudsmanship worldwide and the implications on the ombudsman system in Hong Kong.

For more effective operation by future Ombudsmen, I hope that after studying these proposals and observations, the Administration would map out a way forward that would serve our community more comprehensively.

Parting Note

Hong Kong has long had a name for clean and efficient administration. This means clear and reasonable objectives, responsive and responsible administration, fair and open practices under firm yet sympathetic leadership. There have been, and may well continue to be, slips from time to time. In an evolving society under pressure from the challenge of change, this is inevitable; but we should take reference and learn from the mistakes. Given the will and Hong Kong's remarkable resilience, we can do better and discharge ourselves with dignity and integrity.

My time as The Ombudsman has been gratifying. I am immensely grateful to my colleagues and to my Honorary Advisers for their unfailing support; and, of course, to the Administration and prescribed public bodies for cooperation in our inquiries.

Ombudsmanship in Hong Kong has come a long way in the past 20 years. All three ombudsmen have contributed, in different styles, towards the development and enhanced public awareness of the ombudsman system. Through close monitoring by legislators, the media and the public at large, we are constantly reminded that the watchdog is being watched! Their feedback ensures that our findings are in tune with the values of the community.

That I continue to serve as Secretary to the International Ombudsman Institute after my retirement reflects peer recognition of the capability and standing of Hong Kong's ombudsman office in the ombudsman community. I leave the Office with good heart, and in good hands for further development.

Alice Tai
The Ombudsman
31 March 2009





Chapters

Chapter 1

Our Role and Jurisdiction

1.1 Established two decades ago by The Ombudsman Ordinance ("the Ordinance"), Cap 397 of the Laws of Hong Kong, the Office of The Ombudsman is the city's independent watchdog of public administration. We investigate actions by Government departments and public bodies for administrative deficiencies and recommend remedial measures. In this context, we foster good public administration for fair and open, responsive and responsible governance.

Jurisdiction

1.2 The Ombudsman has powers to investigate complaints of maladministration by Government departments and the public bodies listed in Part I of Schedule 1 to the Ordinance (see **Annex 1**). With the addition of the newly established West Kowloon Cultural District Authority, there are now 19 public bodies within our purview. The Ombudsman may also, in the absence of complaints, initiate direct investigation into significant issues and areas of systemic maladministration.

1.3 Broadly speaking, "maladministration" means poor, inefficient or improper administration including unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for others.

1.4 The Hong Kong Police Force, the Independent Commission Against Corruption and three other organisations in Part II of Schedule 1 to the Ordinance (see **Annex 1**) are not subject to investigation, except for cases of non-compliance with the Code on Access to Information[1].

Actions Not for Investigation

1.5 The Ombudsman's purview is not without prohibition. Cases related *inter alia* to legal proceedings or prosecution decisions, contractual and other commercial transactions, personnel matters and imposition or variation of conditions of land grant are out of bounds. A full list of such prohibitions is at **Annex 2**.

Restrictions

1.6 The Ordinance also prescribes other circumstances under which The Ombudsman shall not conduct an investigation: for example, the complainant has had knowledge of the subject of complaint for over two years, is anonymous, or is not the person aggrieved or a suitable representative of that person. Such restrictions are detailed at **Annex 2**.

1.7 Nevertheless, in some cases, The Ombudsman may exercise discretion whether or not to conduct, or to discontinue, an investigation. A case may be taken up, for instance, if the complainant is able to explain satisfactorily why the complaint could not have been lodged within two years.

Jurisdictional Review

1.8 Between 2007 and 2008, we conducted a comprehensive review of our jurisdiction and made some recommendations to the Administration. They have been under consideration and Government's decision is pending. Details are given in **para. 4.34** of **Chapter 4**.

[1] The Code was introduced in 1995 to make available to the public as much Government-held information as possible, unless there are valid reasons – related to public, private or commercial interests – to withhold it. It applies to all Government departments, the Independent Commission Against Corruption and the Hong Kong Monetary Authority.

Chapter 2

Our Investigation Procedures

Complaint Handling

Modes of Complaint

2.1 Complaints may be lodged in person, by letter, by post or by fax, or on our postage-free complaint form. They may also be made by telephone for simple initial cases involving not more than two organisations.



Fig. 2.1 Complaint loged in person

2.2 We also accept complaints via e-mail. However, for security of the information, they must be digitally signed under proper electronic certification. Otherwise, we have to respond by post to guard against disclosure, as we are required by law to maintain stringent secrecy under penalty of a fine and imprisonment.

Topical Complaints

2.3 From time to time, we receive complaints from more than one person, more or less concurrently, about a particular social issue or current topic relating essentially to the same action or decision by the organisation(s) concerned. We term such cases "topical complaints" (previously known as "serial complaints") to distinguish them from complaint cases on disparate issues or topics, so as to more accurately reflect our caseload and the frequency of complaint against different organisations.

Assessment

2.4 Our Assessment Team screens all incoming complaints to ascertain whether they come within the statutory purview of The Ombudsman and whether they have a *prima facie* case to warrant investigation. Essential information includes the organisation(s) and the matter under complaint, basic details of time and persons involved as well as grounds for grievance.



Fig. 2.2 Assessment Team

2.5 Where The Ombudsman decides not to pursue a case, we aim to notify complainants of the reasons within 15 working days (see **Annex 3** for our performance pledges). Even with complaints "screened out" because the complainants are anonymous or unidentifiable, we do not discard them but examine them for any pattern of systemic or systematic maladministration. This may prompt topics for direct investigation (see **paras. 2.17 – 2.22**).

2.6 Some complaints may be "screened out" by The Ombudsman because there is no *prima facie* evidence of maladministration. However, as the complainants may be in need of services from some Government departments or public bodies, we take it upon ourselves to advise them where and how to get such services, as if we were social workers or counsellors.

2.7 On appeal by complainants of "screened-out" cases, the Assessment Team will, as appropriate, "re-assess" such cases and "re-open" them; or with The Ombudsman's approval, screen out the cases again.

2.8 Complaints "screened in" go to one of our five investigation teams for preliminary inquiries, resolution by mediation, or full investigation.

Fig. 2.3

Preliminary Inquiries	
Type	**Method**
INCH	With the complainant's consent, a relatively simple case is referred to the organisation concerned for investigation and reply direct to the complainant, with a copy to us. The Ombudsman may request specific information from the organisation, monitors progress and scrutinises the reply. Where it is not satisfactory, we may take up the case for RAC or even full investigation.
RAC	The Office collects key facts relating to the case. If the matter can be fairly and fully explained, we will present the findings with observations to the complainant and make suggestions to the organisation concerned for remedy and improvement where necessary. If further inquiries are called for, we may conduct a full investigation (see **para. 2.12**).

Preliminary Inquiries

2.9 We often conduct preliminary inquiries before determining whether a full investigation is necessary. Such inquiries may come under our Internal Complaint Handling Programme ("INCH") or take the form of Rendering Assistance/Clarification ("RAC"), as outlined in **Fig. 2.3**.

Mediation

2.10 With the voluntary consent of both the complainant and the organisation concerned, The Ombudsman may try to settle a case by mediation. This alternative method for dispute resolution is suitable for cases involving only minor or no maladministration. The two parties meet to explore a mutually acceptable solution. Our trained investigators act as impartial mediators.

2.11 If mediation fails to resolve the matter, or the complainant requests to reactivate his complaint, our Office will assign another investigator to initiate preliminary inquiries or a full investigation afresh.

Full Investigation

2.12 For complex cases involving issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, The Ombudsman will order a full investigation.

2.13 This is an extensive and intensive process of probing for evidence. Apart from examining documents, we may summon witnesses, counter-check data with the complainant and go on site inspections. Where necessary, we will consult members of our Panel of Professional Advisers, who are all experts with good standing in professional fields (see **Annex 4**).

2.14 We will also invite comments on our preliminary observations and views from any organisation or individual that may have been criticised or adversely affected. When finalised, the report will be presented to the complainant for information and to the head(s) of the organisation(s) concerned for implementation of our recommendations.

2.15 In our investigation reports, complaints are classified according to how far the allegations of maladministration are well founded: "substantiated", "partially substantiated" or "not substantiated". In some cases, although the specific allegations in the complaint are not substantiated, other significant acts or aspects of maladministration are identified. These are then classified as "substantiated other than alleged". The different categories of outcome are defined in the **Glossary of Terms** (see **Annex 5**).

CHAPTER 2

OUR INVESTIGATION PROCEDURES

Review

2.16 Complainants dissatisfied with our findings or conclusions may seek a review of their cases. Such requests first go through the original investigator, who will examine the complainant's grounds for review and submit his view to the Chief Investigation Officer of the team. The latter will take a fresh look at the case, focusing on any fresh evidence or new angles before submitting the request to the relevant Assistant Ombudsman for consideration. Replies to the complainants are always scrutinised by the Deputy Ombudsman, before determination by The Ombudsman.

Direct Investigation

2.17 Under the Ordinance, direct investigations ("DIs") in the absence of complaints enable The Ombudsman to review matters of moment at a macro level, as opposed to individual cases. Essentially, this means examining systems with systemic or widespread deficiencies.

Selection of Issues

2.18 A DI may be prompted by significant topical issues of community concern, implementation of new or revised Government policies or repeated complaints of particular matters. These include cases which may have been "screened out" during our assessment process but which show some pattern of systemic problems or systematic maladministration (see **para. 2.5**).

DI Assessment

2.19 Before we formally launch a DI, we may conduct an initial assessment ("DI assessment"). For this purpose, we research public information from annual reports and websites, legislation and media reports, as well as information from the organisation(s) direct. If such assessment points to the need for further study, we will formally notify the head(s) of the organisation(s) and initiate a DI.

2.20 Where our DI assessment finds no significant maladministration or the organisation(s) concerned has made proactive improvement, we will not initiate a DI. We will simply conclude the study as a "mini-DI" and offer our findings to the organisation(s) for comments. Such report outlines the background to the issue, an appraisal of public concern, together with our observations on the role and the action of the organisation(s) concerned. Where appropriate, we make recommendations for improvement.

Investigation Methodology

2.21 The procedures for DI are akin to those for investigation into individual complaints. Unlike the latter, however, it is our established practice to declare publicly our initiation of DIs and openly invite views from relevant sectors and experts as well as the community at large. Findings are then announced at media conferences. This is justified as the subjects are invariably of public interest. Such reports form part of the library stock in our Resource Centre (see **Chapter 6**).

2.22 In the course of our investigation, we often meet with senior officers of the organisation(s) to discuss face-to-face our preliminary findings. Such exchanges are useful in clarifying points for possible incorporation into our report and furthering better insight into the issues.

Implementation of Recommendations

2.23 In all our reports, whether on complaint investigation or DI, our recommendations to the organisation(s) concerned aim to make for more open and client-oriented service, transparent and accountable administration, more efficient processes and effective practices. However, where policies are found outdated or inequitable, The Ombudsman will offer comments, even though they are generally not matters for our investigation.

2.24 Heads of organisations have a duty to report at regular intervals their progress of implementation. We will monitor and keep track by correspondence.

2.25 Unlike Court verdicts, The Ombudsman's recommendations are not binding. Nevertheless, where an organisation refuses to accept any of such recommendations, The Ombudsman may submit a report to the Chief Executive of the Hong Kong Special Administrative Region. Similarly, where an organisation fails to implement or to act adequately on any recommendation, The Ombudsman may report to the Chief Executive. In such event, the Ordinance requires that a copy of the report be laid before the Legislative Council within one month or such longer period as the Chief Executive may determine.

Secrecy Requirement and Publication of Reports

2.26 The Ombudsman, staff and Advisers are all bound by law, under penalty of a fine and imprisonment, to maintain secrecy on all matters that come to our knowledge in the exercise and execution of our functions. This is to ensure that any person or organisation providing information to our Office can do so without reserve or fear of reprisal from the disclosure of their identity or related data.

2.27 In this connection, it is our firmly established practice not to respond to any enquiry from third parties on individual complaints. However, The Ombudsman may publish anonymised reports on complaint investigation, where it is in the public interest to do so.

Essence of Our Investigation

2.28 Our object in investigation is to establish the facts of a case and, where appropriate, enhance the quality of public administration. We do not conduct witch-hunt or criticise regardless. We inquire without fear or favour, bias or prejudice. We aim for fair and impartial conclusion of a case.

Chapter 3

Performance and Results

Enquiries and Complaints Processing



Fig. 3.1 Enquiry Counter

3.1 Enquiries and complaints rose yet again this year, as shown in **Fig. 3.2**, with 14,005 enquiries and 5,386 complaints received, 15.1% and 8.0% increases respectively over last year's figures. The number of complaints received this year was the second highest ever recorded, after 5,606 in 2006/07.

Fig. 3.2

Enquiries and Complaints Received

Year	Enquiries	Complaints	
		only for us[1]	including those copied to us
2004/05	11,742	3,802	4,654
2005/06	14,633	3,828	4,266
2006/07	15,626	5,606	6,114
2007/08	12,169	4,987	5,419
2008/09	14,005	5,386	5,945

[1] These figures exclude "complaints to others copied to us" : see Glossary of Terms in Annex 5. It was termed "potential complaints" before 2006/07.

Topical Complaints

3.2 In recent years, there have consistently been complaints coming in in groups, organised or not, triggered by some social or topical issues attracting public attention or affecting a section of the community. In 2006/07, Typhoon Prapiroon and the Broadcasting Authority's criticism of a Radio Television Hong Kong programme resulted in over 1,500 complaints being lodged with our Office. Last year, three issues – namely, the Obscene Articles Tribunal's determination of certain articles in a university students' publication as indecent, the management responsibility of a footbridge linking two housing estates and a new arrangement of the Leisure and Cultural Services Department for registration for certain sports training course – brought in some 1,100 complaints.

3.3 This year, we received a total of 853 topical complaints, most of them arising from two issues:

- a controversial question in a public examination, attracting 90 complaints;
- the minibond incident, resulting in some 650 complaints.

3.4 Since topical complaints have a set of essentially common and often even identical complaint points, we conduct inquiries into them as if for one case. However, on conclusion we always reply individually to each complainant who has provided the necessary personal particulars.

3.5 Invariably, topical complaints inflate our complaints statistics and thus affect the overall pattern of both complaints received and the outcome of our inquiries. For more accurate reflection of our caseload, starting from this year our statistics will indicate the number of topical complaints where appropriate (see **Table 1**).

Mode of Lodging Complaints

3.6 As **Fig. 3.3** shows, email continued to rise in popularity as a channel for lodging complaints, replacing letter by post as the most frequently used mode this year. Complaints lodged by complaint form increased sharply more than 1.5 times, from 486 last year to 1,300 this year. The bulk of them was topical complaints related to the minibond losses. Complaints by post roughly returned to the previous level, after the sudden surge last year because of the housing estate topical complaints mentioned in **para. 3.2** above.

Fig. 3.3

Mode of Lodging Complaints					
Mode	**2004/05**	**2005/06**	**2006/07**	**2007/08**	**2008/09**
In person	396	231	412	251	370
In writing –					
by complaint form	934	613	586	486	1,300
by letter through post	1,599	1,303	1,002	1,829	936
by fax	615	863	836	753	890
by email	821	902	2,461	1,380	1,515
By telephone	289	354	309	288	375
Total	**4,654**	**4,266**	**5,606**[2]	**4,987**[2]	**5,386**[2]

[2] Figures since 2006/07 exclude "complaints to others copied to us".

Complaints Handled

3.7 The number of complaints handled and concluded this year reached a record high, at 6,671 and 5,701 respectively. Among the cases concluded, 2,684 (47.1%) were pursued, 1,108 (19.4%) screened out being under restrictions by law or outside our jurisdiction (see **Chapter 1**); and 1,909 (33.5%) not pursued (see **para. 3.10**). A breakdown of our caseload for the past five years is in **Table 1**.

3.8 Most (85.3%) of the cases pursued and concluded in the year were handled by way of RAC ("Rendering Assistance and Clarification").

3.9 Compared with last year, more cases (247) were fully investigated. Among them 187 were topical complaints, including 161 relating to the housing estate case (see **para. 3.2**).

Fig. 3.4

Complaints Pursued and Concluded					
	2004/05	**2005/06**	**2006/07**	**2007/08**	**2008/09**
Preliminary Inquiries	1,873	1,758	1,643	1,938	2,437
INCH	209	185	143	81	148
RAC	1,664	1,573	1,500	1,857	2,289
Full Investigation	125	55	71	38	247
Mediation	6	12	2	1	0
Total	**2,004**	**1,825**	**1,716**	**1,977**	**2,684**

3.10 Cases not pursued were complaints *withdrawn* by the complainant, *discontinued* by our Office after initial inquiry or *not undertaken* because further inquiry was considered unnecessary. The main reasons for not undertaking a complaint are:

- a *prima facie* case of maladministraton is not established;
- the complainant is merely expressing opinions or seeking assistance;
- the complainant has refused to consent to disclosure of personal data, necessary for our inquiries;
- the organisation concerned is already taking action on the matter; or
- there is another authority for the matter.

3.11 A significant number of the cases not undertaken this year were the topical complaints about the minibond issue. We noted that the Hong Kong Monetary Authority and the Securities and Futures Commission were already taking action and the Legislative Council was conducting an inquiry.

Major Causes for Complaint

3.12 The four causes most often mentioned by complainants were:

- error, wrong decision or advice;
- ineffective control;
- failure to follow procedures, delay; and
- disparity in treatment, unfairness, selective enforcement.

As **Fig. 3.5a** shows, "error, wrong decision or advice" has consistently topped the list with the exception of last year. "Ineffective control" came second this year, largely because of the topical complaints arising from the minibond losses.

Fig. 3.5a

Causes for Complaint in the Last Four Years

Nature of allegation/maladministration identified	% among all concluded cases@			
	2005/06	2006/07	2007/08	2008/09
Error, wrong decision/advice	23.8%	46.5%	24.3%	29.4%
Ineffective control	10.0%	6.5%	6.7%	16.2%
Failure to follow procedures, delay	14.7%	11.0%	13.3%	14.3%
Disparity in treatment, unfairness, selective enforcement	7.3%	7.4%	25.4%	14.1%
Negligence, omissions	11.1%	8.0%	8.3%	7.6%
Lack of response to complaint	6.4%	5.0%	5.3%	5.1%
Faulty procedures	4.8%	5.7%	5.4%	4.2%
Staff attitude	5.8%	4.7%	5.2%	3.7%
Abuse of power	4.0%	3.2%	4.4%	2.9%
Others	12.1%	2.0%	1.7%	2.5%

@ The total number of cases concluded in 2005/06, 2006/07, 2007/08 and 2008/09 were: 4,309, 5,340, 4,644 and 5,701 respectively. They included all cases pursued, screened out and not pursued (see Table 1). Figures since 2006/07 exclude "complaints to others copied to us".

3.13 Based on full investigations into cases, the top four types of act of maladministration substantiated or partially substantiated were:

- disparity in treatment, unfairness, selective enforcement;
- error, wrong decision or advice;
- failure to follow procedures, delay; and
- negligence, omissions.

The exceptionally high percentage of acts of maladministration in the category of "error, wrong decision or advice" was attributable to the topical complaints relating to the housing case (see **para. 3.9**). Details are shown in **Fig. 3.5b**.

Fig. 3.5b

Forms of Maladministration Substantiated in the Last Four Years

Nature of allegation/ maladministration identified	% among all acts of maladministration substantiated#			
	2005/06	2006/07	2007/08	2008/09
Disparity in treatment, unfairness, selective enforcement	2.8%	2.4%	12.9%	69.7%
Error, wrong decision/advice	13.9%	12.2%	29.1%	14.5%
Failure to follow procedures, delay	30.6%	31.7%	16.1%	4.2%
Negligence, omissions	11.1%	9.8%	6.45%	3.3%
Ineffective control	19.4%	14.6%	6.45%	1.3%
Faulty procedures	5.6%	9.8%	6.45%	2.9%
Lack of response to complaint	11.1%	17.1%	16.1%	0.8%
Staff attitude	2.8%	0%	6.45%	0.4%
Abuse of power	2.8%	0%	0%	0.4%
Others	0%	2.4%	0%	2.5%

The total number of allegations substantiated, substantiated other than alleged or partially substantiated after full investigation in 2005/06, 2006/07, 2007/08 and 2008/09 were: 36, 41, 31 and 241 respectively.

Organisations Most Complained About

3.14 A full list of organisations on which enquiries and complaints were received during the year is in **Table 4**. The figures include all complaints received, whether pursued or not. We used to take these figures to determine the organisations most frequently complained. However, upon review we consider it more meaningful to rank organisations on the basis of complaints that have a prima facie case and hence are pursued by us. Accordingly, in identifying the "top ten organisations most complained about" this year, we excluded complaints that were screened out or otherwise not pursued (see **Table 3**).

3.15 On this new basis, the Food and Environmental Hygiene Department and the Buildings Department, the two departments constituting the Joint Office for seepage complaints, have overtaken the Housing Department and the Lands Department as the top two organisations most complained about this year.

3.16 Although there was some slight shift in the relative positions of some organisations in the "top ten" league, nine of the ten featured last year have remained in the league. The Television and Entertainment Licensing Authority, which was the target of a group of topical complaints last year (see **para. 3.2**), has dropped out. The tenth position this year has been taken up by the Home Affairs Department.

Outcome of Inquiries

3.17 We conducted full investigation on 247 complaints including 187 topical complaints, with 226 or 91.5% substantiated, partially substantiated or substantiated other than alleged (see Glossary of Terms in **Annex 5**), compared to 60.5% last year. If topical complaints are excluded, the percentage this year is 65%. The outcome of our full investigations is summarised in **Fig. 3.6**.

3.18 Complaints concluded after preliminary inquiries are not classified by their outcome. However, as shown in **Fig. 3.7**, among the 2,289 cases concluded by RAC, we suggested remedial action by the organisations concerned in 15.6% of the cases. This compares with 34.5%* and 18.5% in the two previous years. **Table 8** presents the detailed figures for each organisation.

* The exceptionally high percentage recorded last year was mainly due to remedial action being suggested in a group of over 300 topical complaints.

Fig. 3.6

Substantiation Rates of Complaints Concluded by Full Investigation

Classification	No. of Complaints	Percentage
Substantiated	21	8.5%
Partially substantiated	171 (161)	69.2%
Substantiated other than alleged	34 (25)	13.8%
Unsubstantiated	20 (1)	8.1%
Withdrawn/Discontinued	1	0.4%
Total	**247 (187)**	**100.0%**

(Note : Figures in brackets are topical complaints)

Fig. 3.7

Outcome of RAC Cases

Outcome	No. of Complaints	Percentage
Remedial Action Required	357	15.6%
No evidence of maladministration	1,902	83.1%
Inconclusive	30	1.3%
Total	**2,289**	**100.0%**

Direct Investigation

3.19 With the second Direct Investigation team reinstated in November 2007, we were able to take up more direct investigations in the past year: six direct investigations and four direct investigation assessments (or "mini-direct investigations"), plus six other direct investigations in progress at the end of the year. These are detailed in **Fig. 3.8**.

Fig. 3.8

(a) Direct Investigation Reports Completed in 2008/09	
Date	**Subject**
23 June 2008	Effectiveness of the Integrated Call Centre in Handling Complaints
15 December 2008	Control of Roadside Banners
15 December 2008	Prevention of Abuse of Special Grants under the CSSA Scheme
17 December 2008	Government Measures for Street Management
23 March 2009	Support Services for Students with Specific Learning Difficulties
24 March 2009	Free Admission Scheme for Leisure Facilities from July to September 2008

(b) Direct Investigation Assessments Completed in 2008/09	
Date	**Subject**
7 July 2008	Procedures for Reporting Breach of the Unsolicited Electronic Messages Ordinance
8 September 2008	Enforcement Against Unauthorised Extension of Business Areas by Licensed Restaurants
17 February 2009	Arrangements for Driving Test Routes
31 March 2009	Privacy Commissioner for Personal Data's Arrangements for Notifying Complainants of Refusal to Investigate

(c) Direct Investigations in Progress	
Date Declared	**Subject**
26 June 2008	System for Development of Question Papers in Public Examinations
5 October 2008	Housing Department's Handling of Complaints Involving Property Damage or Minor Injuries
20 November 2008	Granting of Disability Allowance and Processing of Appeals by Social Welfare Department
15 January 2009	Monitoring of Lift Safety by Electrical and Mechanical Services Department
26 February 2009	Effectiveness of Administration of Code on Access to Information
19 March 2009	Procedures for Enforcement of Driving-offence Points System

Recommendations

3.20 On completion of full investigation of 60 cases (excluding topical complaints) and six direct investigations, 85 and 68 recommendations respectively were made, i.e. a total of 153. So far, 118 (77.1%) of them have been accepted by the organisations for implementation and 35 (22.9%) are still under consideration. None has been rejected.

3.21 On conclusion of a case by RAC, we make suggestions for systemic improvement where due. This year, 164 such suggestions were made, compared with 237 last year. A breakdown of these by organisations is in **Table 8**. Noticeable reduction in this category of suggestions occurred in the Buildings Department, the Food and Environmental Hygiene Department and the Lands Department, which might be attributable to the completion of the direct investigations on the subjects of seepage last year and street management this year.

Our Performance

3.22 We have laid down performance pledges for our enquiry and complaint handling. These and our record of achievement are detailed in **Annex 3**, which shows that we continued to meet our pledges fully in respect of answering enquiries by telephone and in person. In respect of answering enquiries in writing, we met our pledge in 97.7% of the cases. We also fully met our pledge in arranging group visits and talks this year.

3.23 In processing complaints, we acknowledged and completed initial assessment within five working days for 99.8% of the complaints received, against the pledge of 80%, and 99.98% within the target timeframe of ten working days, with 0.02% exceeding it. For processing cases outside jurisdiction or under restriction, we exceeded the target timeframe of 15 working days in 3.25% of the cases, compared with 1.6% last year (see **Fig. 3.9(a) and (b)**). The significant rise in the number of complaints received (see **para.3.1**) had made it increasingly difficult to finish assessing all cases within the target of 15 working days.

3.24 For cases screened in for further processing, we were able to conclude 65.9% of the cases, against the pledge of 60%, within three months. Last year, our performance was 56.4%. This year we had 1.8% of the cases not concluded within six months, our pledge timeframe for completing all cases. This was slightly better than the 2.0% last year (see **Fig. 3.9(c)**).

Fig. 3.9

(a) Response Time for Acknowledgement/Initial Assessment

Year	Response Time		
	Within 5 working days (target : 80%)	Within 6-10 working days (target : 20%)	More than 10 working days
2004/05	94.0%	4.2%	1.8%
2005/06	99.75%	0.22%	0.03%
2006/07	99.90%	0.05%	0.05%
2007/08	99.91%	0.06%	0.03%
2008/09	99.80%	0.18%	0.02%

(b) Processing Time for Cases Outside Jurisdiction or Under Restriction			
Year	Response Time		
	Within 10 working days (target : 70%)	Within 11-15 working days (target : 30%)	More than 15 working days
2004/05	62.6%	34.4%	3.0%
2005/06	40.9%	57.3%	1.8%
2006/07	90.9%	8.7%	0.4%
2007/08	88.1%	10.3%	1.6%
2008/09	77.2%	19.6%	3.2%

(c) Processing Time for Other Cases Concluded			
Year	Response Time		
	Less than 3 months (target : 60%)	Within 3-6 months (target : 40%)	More than 6 months
2004/05	43.3%	53.7%	3.0%
2005/06	56.0%	41.0%	3.0%
2006/07	57.1%	40.3%	2.6%
2007/08	56.5%	41.5%	2.0%
2008/09	65.9 %	32.3%	1.8%

3.25 Processing time is not always within our control. Longer processing time was necessary in some cases because of factors such as:

- complexity of the case;
- voluminous documents for scrutiny and analysis;
- new developments mid-stream;
- complainee organisations requiring more time for response to our inquiries; and
- parties challenging our findings.

Overview

3.26 As anticipated, the publicity programme launched towards the end of the last reporting year and the roughly bi-monthly declaration of findings of our direct investigations resulted in another upsurge of cases this year. The impact on our Assessment Team, vetting cases on receipt, was immediate and immense. To cope with this influx, we strengthened the assessment complement and, where necessary, mobilised the investigation teams to help out. With dedication and diligence, our staff managed to maintain our service standard.

3.27 We continued to improve our complaint database and statistical presentation, so that they can reflect more accurately both our workload and the pattern of complaints. To this end, further to the exclusion since 2006/07 of complaints to other organisations copied to us this year, responding to the continuing trend for topical complaints, we indicated in our statistical tables the number of such complaints for both complaints received and

those concluded. For a more meaningful view of our work pattern and the organisations most prone to complaint, we base the "top ten" league on complaints with some substance.

3.28 We endeavour to enhance our performance, even with the challenge of increasing workload. We aim to provide useful feedback to the organisations within our purview as well as to the community at large.

Enhancing Quality Administration

4.1 An important part of our mission is, through our investigation, to bring about improvement in the quality of service and standard of public administration. We achieve this by making recommendations and suggestions on conclusion of our inquiries. This year, I made 153 recommendations on conclusion of our full or direct investigations and 164 suggestions on conclusion of cases by way of RAC.

4.2 Before we finalise them, we always seek the views of the organisations concerned to ensure that the measures we suggest are practical and practicable, realistic and reasonable. Most of our recommendations and suggestions have, therefore, been accepted by the organisations concerned. We monitor their implementation and review their progress. If the organisations concerned should encounter genuine difficulties, such as unforeseen or changed circumstances, we will revisit the matter with them.

4.3 Every year our Annual Report is tabled in the Legislative Council. In this connection, the Administration submits a Government Minute to summarise and update on the actions taken by the organisations concerned in implementing our recommendations and suggestions.

4.4 The measures thus introduced by organisations have resulted in visible improvement to their operations and services. These measures fall broadly into seven areas:

(a) guidelines for clarity, consistency or efficiency in operation;

(b) better arrangements for inter-departmental co-ordination;

(c) measures for better public enquiry/complaint handling;

(d) measures for better client services;

(e) more reasonable rules and charges;

(f) clearer information to the public; and

(g) training for staff.

Examples include streamlined procedures for processing applications, stipulated timeframe or performance pledges for handling complaints, more reasonable rental for public facilities and charges for services, and timely notification of progress of action by an authority. More are detailed in **Annex 6**.

Addressing Systemic Issues

4.5 In concluding a complaint, apart from suggesting remedies where appropriate and measures for improvement, we also consider whether the problems identified stem from systemic, more deep-rooted deficiencies within the organisations concerned. If so, we will bring them to the attention of the heads of the organisations or their policy bureaux concerned and, where justified, even the central Administration. If the problem cannot be fully addressed as individual complaints, we may initiate direct investigations for more in-depth scrutiny (see **para. 2.17** of **Chapter 2** and **para. 3.20** of **Chapter 3**).

4.6 The lack of inter-departmental coordination has remained the most noticeable underlying cause for systemic problems. It is manifested in a number of issues.

Water Seepage and the Joint Office

4.7 I have commented repeatedly in my past Annual Reports on the perennial problem of water seepage and the inadequacy of Government action. Since 2006, Government has set up Joint Offices with staff from the Buildings Department ("BD") and the Food and Environmental Hygiene Department ("FEHD") to offer a "one-stop service" for complaints of seepage territory-wide. Equipped with better technical know-how, it aimed to provide a one-stop service to the public.

4.8 However, as reported last year, clearly evident deficiencies had prompted us to conduct a direct investigation into the initial operation of the Joint Office. This was completed in March 2008. Apart from deficiencies in procedures and practices, we identified several structural defects of the scheme, particularly the loose formation of the Joint Office void of a proper head and the exclusion of the Water Services Department ("WSD") from the scheme resulting in difficulties in coordination. It is also obvious that private property owners harbour unrealistic expectations of Government involvement where responsibility for remedy and repair should be their own.

4.9 Regrettably, I have to report that these two major problems not only have yet to be rectified but appear to have deteriorated. When the Joint Office was first set up, BD did assume a leading role and managed a degree of coordination. In the past year, the two departments have increasingly drifted apart and treated each other as a separate department, refraining from commenting on action by the other. More worrying was that we encountered instances where the two departments passed the complaint case to and fro because they could not agree on who should do what next. We have also received representations from staff of a department criticising action by the other in handling seepage complaints. Separately, we continued to see cases where WSD had declined to investigate despite referral by the Joint Office.

4.10 This is most unsatisfactory. It is imperative for Government to implement early the recommendations of our direct investigation, particularly that of providing the Joint Office with an effective organisational structure. Equally important is the need to define Government's role and owners' responsibility in matters such as seepage in private properties.

Street Management

4.11 Street management has been a major source of public dissatisfaction with Government and graphic example of poor inter-departmental coordination. Such problems often fall between the enforcement jurisdiction of a cross-section of departments and no single department is the obvious authority. This is not helped by the compartmentalised mentality of some of the officials. As a result, ineffective and inadequate action is taken by Government as a whole. Meanwhile, the public gets increasingly impatient as their complaints remain unresolved.

4.12 During the year, we conducted a direct investigation on the subject, particularly relating to problems caused by roadside skips, illegally parked bicycles and on-street promotional activities, and made a number of recommendations. We consider the matter best tackled within the framework of the District Administration Scheme.

District Administration

4.13 In connection with the District Administration Scheme, we noted a growing trend of District Councils ("DCs") referring public complaints to our Office; and DC Members, in their official capacity, complaining to our Office against Government departments for acting against the advice of the DC or DC sub-committees. We consider such moves to be contrary to the Administration's increasing empowerment of DCs.

4.14 Moreover, DCs have a role in advising and monitoring public administration and are themselves forums for discussion of services and matters in their locality. They have Government representatives in Council and in committees to respond there and then to their views or complainants' queries direct. Should a DC or DC Member consider our Office better placed to process a public complaint, they should advise the complainant to address us direct rather than referring cases to us. In any event, bound by our secrecy provision, we are prohibited by law to deal with a complaint *via* a third party.

4.15 Similarly, matters unresolved in DC committees or sub-committees should be escalated to the full Council. Our Office simply has no authority to delve into matters where DC Members, aggrieved in their official capacity, complain against Government departments not taking their advice.

4.16 We have addressed the Director of Home Affairs on this for assistance in clarifying our role to DCs and their Members.

Inadequate Planning

4.17 During the year, a number of new, and generally welcome, policies or programmes introduced by Government attracted widespread public criticism, especially on the confusion over implementation details. They reflected inadequate planning and gave the impression of Government wavering in its stance. In this connection, some complaints have been made to our Office.

4.18 A case in point was the Free Admission Scheme for leisure facilities in the period from July to September 2008. Its object was commendable: celebrating with the community the Olympics in China and promoting interest in sports and exercise. However, implementation was subject to much public criticism. The considerable number of complaints received by our Office prompted us to initiate a direct investigation. It was completed in March 2009 and our findings should offer useful reference for the planning and execution of similar initiatives in future.

Inflexibility and Bureaucracy

4.19 Blind adherence to set procedures is often a cause for injustice and maladministration in public offices. Efficient and effective public service must be client-centered. A positive and proactive culture of service is key to good governance and proper administration.

4.20 Take for example, a case with us. A seriously disabled elderly woman did not get renewal of her disability allowance because due to her health condition, she was unable to respond to the department's invitation to complete the necessary procedures. She passed away later and her daughter's request for the amount of disability allowance due to her mother before her demise was declined by the Social Welfare Department ("SWD") for want of formal medical assessment of the woman's health condition for the period in question. This, despite the fact that the public hospital where the woman had received treatment before her death could produce medical records showing her severe disability before death. SWD insisted on not granting the allowance retrospectively unless there was formal medical assessment. Meanwhile, the public hospital would not produce such an assessment report as the patient had already passed away. By sheer persistence, we managed to secure the hospital's agreement to produce the assessment report eventually and SWD's agreement to pay out the allowance to the woman's estate. We believe that, had SWD exercised greater flexibility and taken greater initiative in liaising with the Hospital Authority, the matter should have been resolved much earlier.

Abuse of System

4.21 I have been commenting in the past on persistent and unreasonable complainants and the abuse of the complaint system, to pursue selfish ends or for purposes of personal vendetta. This certainly should not be encouraged. On our part, we adhere firmly to our fundamental value of maintaining impartiality and objectivity: we investigate to establish the facts. Where warranted, we would comment on the complainant's behaviour. However, there are occasions when an organisation had been proper and firm but succumbing to unreasonable demands subsequently during the course of our inquiries into the complaint. Our initiating inquiries into a case does not necessarily mean we accept the complainants' allegations or see mistakes by the organisation concerned.

Code on Access to Information

4.22 Government's Code on Access to Information requires departments to provide information they hold to the public upon request, unless there are valid reasons as specified in the Code. Under The Ombudsman Ordinance, I am charged with the responsibility to inquire into complaints of breach of the Code.

4.23 This year, we received 21 Code-related complaints, compared with 16 last year, showing a gradually rising public awareness of the existence of the Code. We see a general lack of understanding of the Code continuing among Government departments: they do not seem to realise that the intent or spirit of the Code is to be as open and transparent as possible. There were still instances of departments refusing information requests without providing any reasons or with reasons not specified in the Code. On occasions, gross misunderstanding or misinterpretation of the Code or its spirit was observed.

4.24 It should be emphasised that the Code is an important vehicle to ensure open and accountable government. It aims to protect the citizen's civil and political rights and is in favour of disclosure. In this connection, I wish to quote President Obama, the newly elected President of the United States: "A democracy requires accountability, and accountability requires transparency." He furthers says, "The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."[1] Unfortunately, such attitudes are found in some branches of our Administration. It is clear that greater efforts to promote the Code within Government are needed. To assist Government, I initiated a direct investigation on this subject in February 2009.

[1] "Memorandum for the Heads of Executive Departments and Agencies – Freedom of Information Act" issued by the Office of the Press Secretary of the White House on 21 January, 2009.

Challenges from Parties

4.25 Under The Ombudsman Ordinance, my decisions are final, whether on initiating inquiries or concluding a case. If there is fresh evidence or new perspectives, I am of course prepared to re-assess a case and review my decisions and conclusions.

Re-assessment and Review of Cases

4.26 I cannot take up a complaint where the matter is outside my jurisdiction or is restricted under The Ombudsman Ordinance. However, if a complainant provides new information in support of his allegation, we will revisit the case. After re-assessment, I may uphold my original decision or re-open the case for inquiry.

4.27 During the year we received 225 requests for re-assessment, with 64 subsequently re-opened for inquiry.

4.28 For cases that we have concluded after examination of the issue under complaint, complainants dissatisfied with our findings or conclusions may seek a review. We have specific procedures for such cases: the original investigator or, if he is not available, another investigator will examine the complainant's grounds for review and present his comments to the Chief Investigation Officer of the team. The latter will critically review the case, focusing on fresh evidence or new angles, if any, before onward submission of the request to the relevant Assistant Ombudsman for consideration. Requests for review are always scrutinised by my Deputy, before coming to me for final approval and conclusion.

4.29 This year, we received 246 requests for review. I varied my decision in seven cases after review and upheld my original decision for the rest.

Fig. 4.1

Review Cases						
Reason / Result	New evidence		New perspective		Outside jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	3		4			**7**
Decision upheld		232			7	**239**
						246

4.30 Occasionally a complainant dissatisfied with the outcome of our inquiries will, in addition to requesting a review of his case, make allegations against the investigation officer for such matters as bias, lack of thoroughness or poor conduct. In such cases, the request for review and the complaint against the officer will first be passed to the head of office administration to see whether the complaint is genuinely against the conduct of my staff. If so, the head of office administration will process the complaint separately and independently (see **paras. 5.20 – 5.22** of **Chapter 5**) and report his findings to me. Meanwhile, the request for review of the complaint will be handled in parallel by the Investigation Team as described in **para. 4.21**.

4.31 However, more often than not, such allegations really arise from dissatisfaction with the findings or conclusions of our inquiries. As these findings are subject to my personal approval, such allegations are actually complaints against my decisions, not my officers. In such case, the request for review will go back to the relevant team chief for handling in accordance with the prescribed procedures.

Judicial Review

4.32 As my decision on a case is final, individuals or organisations not satisfied with my decision may request review by me or seek a judicial review by the court.

4.33 During the year, three complainants applied for judicial review against my decisions in three cases: one concerning the Judiciary, another on services of a public hospital and the third on the work of an organisation appointed by the Innovation and Technology Commission as its agent. None of the applicants succeeded in obtaining leave from the High Court. In all three applications, our Office was not required to appear before the court for hearing.

Jurisdictional Review

4.34 This review, in two parts, was completed and presented to the Administration in November 2006 and November 2007. Part I contains my recommendations for including some organisations to Schedule 1 to The Ombudsman Ordinance, relaxing certain restrictions on my investigative powers in Schedule 2 to the Ordinance and resolving some of the difficulties or uncertainties encountered by our officers in discharging their duties. Part II surveys developments in ombudsmanship worldwide and examines their possible implications on our Office. As of end of March 2009, the Administration was preparing to present their views on my review to the Legislative Council.

Overview

4.35 I see our mission as promoting good administration in the public sector. Investigation into maladministration, based on complaints or not, is our tool. We endeavour to identify underlying reasons for occurrence of gaps and mistakes and to offer practicable measures for improvement. We are pleased to note that most of our recommendations and suggestions have been accepted by Government and resulted in better administration. Nevertheless, a number of systemic issues have persisted, as noted in this Chapter. We look forward to firmer action by Government to address these matters.

4.36 We regularly review our services with a view to enhancing our ability to safeguard citizens' rights and contribute to good governance in Hong Kong. We take challenges as opportunities for continual improvement.

OFFICE ADMINISTRATION

5.1 Delinking from Government systems and practices in 2001 was an important milestone in the past twenty years' history of this Office.

5.2 Prior to that, the Office adopted civil service rules and practices and operated largely like a Government department. We had a fixed staff establishment comprising mainly civil servants on loan from Government. On the financial side, we were subject to stringent item-by-item expenditure control just as any department. This deprived the Office of autonomy and flexibility in resource planning and deployment.

5.3 Although the Office functioned smoothly under this arrangement, its independence was seen to have been compromised by its reliance on administrative and staffing support from Government. The fact that investigators of the Office were mainly civil servants who had to return Government departments after their term of secondment inevitably undermined the credibility and the impartial image of the Office. Such concern was repeatedly voiced by members of the public and Legislative Councillors. In response, to safeguard the integrity and independence of the Office, I raised with the Administration proposals to delink from Government staff and systems shortly after my succession as The Ombudsman in April 1999.

Independent Administration and Financial Management

5.4 On 19 December 2001, The Ombudsman Ordinance ("the Ordinance") was amended to establish The Ombudsman as a corporation sole with full powers to formulate and implement policies and procedures for administrative, financial and operational activities. In particular, The Ombudsman is empowered to recruit staff on such terms and conditions as may be determined by her and to build up a reserve of surplus not immediately required for spending.

5.5 Our workload is primarily driven by external factors beyond our control. Since delinking, The Ombudsman's ability to adjust her staff complement flexibly, recruit staff on terms and condition determined by her has enabled the Office to meet fluctuations in caseload with much greater ease and at less expense.

Staffing and Establishment

5.6 This year has been quite a hectic year for our investigations staff as the number of complaints was the second highest since our establishment in 1989. The flexibility gained with delinking facilitates our review and reinforcement of our workforce as and when necessary to cope with sudden upsurge of cases and volume of direct investigations.

5.7 Given the steady increase in caseload over the past five years, we consider enhancement of our full-time complement justified. In 2008/09, we recruited six more regular investigation staff, partly for workload and partly for staff succession.

5.8 To cope with our increasing caseload, we plan to create a sixth team for case investigation. This will help ease the bottle-neck at the Chief Investigation Officer level. The addition of a new investigation team will not alter the organisational structure of our Office. The work schedules of our existing five teams will be reshuffled to ensure a balanced distribution of caseload.

5.9 Temporary and part-time investigation staff could be phased out gradually as more regular staff come on-stream.

5.10 This year, one Senior investigator and a Chief have retired. A few others may also be leaving for retirement or personal reasons in the coming year. The greater intake in 2008/09 has aimed at injecting new blood and preparing for succession.

Fig. 5.1 Organisational Structure

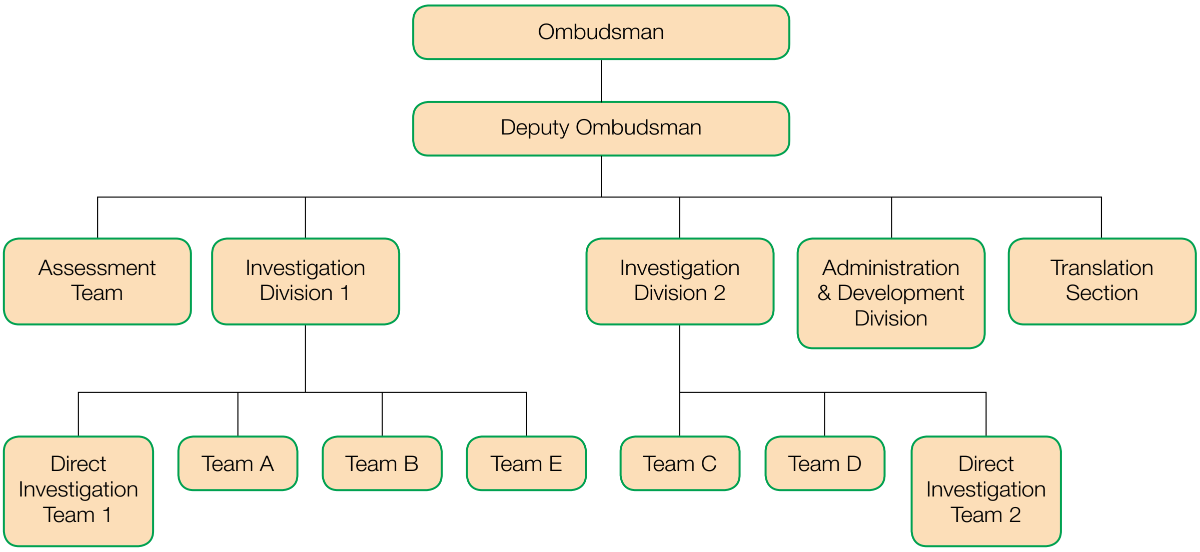


Fig. 5.2

Staffing Complement			
Breakdown of Staff	**As at 31.3.2007**	**As at 31.3.2008**	**As at 31.3.2009**
Directorate	4	4	4
Investigation	45	50	56
Administrative & Support	41	44	47
Total regular staff	**90**	**98**	**107**
Temporary investigation staff: equivalence to full-time posts (total man-days)	2.4 (698)	4.4 (1,171)	4.8 (1,268)
Temporary support staff	-	-	4
Grand Total	**92.4**	**102.4**	**115.8**

5.11 Apart from investigation staff, a few temporary full-time support staff were also engaged for improvement to document management. This is a project for converting all complaint and investigation files from physical to electronic form for better record management and more effective use of office space.

Staff Training

5.12 To enable our new recruits to discharge their duties effectively soonest possible, we organised two induction courses in January and March 2009, for all new colleagues joining us within the year. Each lasted for a few days and covered a wide range of topics ranging from internal administrative support services, application and interpretation of The Ombudsman Ordinance to sharing of experiences in complaint handling and investigation. Both courses were highly valued by all participants. Some serving staff also took the opportunity to refresh their knowledge and skills. With the participants' feedback, we will fine-tune the course content and schedule so as to maximise its benefits.

Office Administration



Fig. 5.3 Induction Training

5.13 To enhance the exposure and broaden the outlook of our investigation staff, we invited guest speakers from kindred organisations to give talks and briefings from time to time on specific subjects relevant to our work.

5.14 In May 2008, Mr André Marin, the Ontario Ombudsman of Canada, conducted a two-day advanced course in "Systemic Investigations" for of our officers. The course was stimulating as it gave us an insight into how investigation could be more efficiently planned and effectively conducted. It also opened our eyes to how the ombudsman system can operate quite differently in another culture and setting.

5.15 We are also grateful to the Civil Service Training and Development Institute for sending its representative on 12 June 2008 to brief us on the new structure of Government after re-organisation since July 2007. The presentation was extremely useful to our investigation work as it facilitates better understanding on the division of responsibilities among all Government bureaux and departments under the Accountability System.



Fig. 5.4 Investigation Training by the Ontario Ombudsman

5.16 On 1 December 2008, we organised a briefing for all our staff on the "Race Discrimination Ordinance" to be in force from June 2009, as it had direct relevance to our frontline services. Our guest speaker from the Equal Opportunities Commission enlightened us on the key concepts of the new legislation and also enhanced our awareness of the consequential amendments to the existing anti-discrimination laws. On the occasion, we had a useful exchange on the extension of our services to the ethnic minority groups in the community.



Fig. 5.5 Briefing on "Race Discrimination Ordinance"

5.17 On language training, we continued to commission an English training course to sharpen the writing skills of our investigation staff. In addition, our Chief Translation Officer also conducted a talk on "Chinese Rhetoric" to better equip investigation staff for preparing Chinese investigation reports.

Document Management Project

5.18 As we move into the 21st year of operation, we have reviewed our record keeping system for better management of our complaint and investigation records and for more cost-effective



Fig. 5.6 Briefing on Government Structure

use of office space. As at 31 March 2009, we have over 60,000 files in our Confidential Registry. As a result of the review, we decided to digitise all these records for storage in a systematic, endurable and readily retrievable format.

5.19 A project team was established in October 2008 for this exercise. After a brief initial stage for learning, all team members have been progressing steadily. At the end of March, the complaint and investigation records for 1989 to 1994 had all been successfully transformed. We expect that the project can be completed in three to five years' time barring unforeseen circumstances.

Complaints against the Office

5.20 This year, we concluded a total of 15 complaints lodged against staff: their manners, our work practices and procedures or both. Four of the nine complaints on staff manner were found to be "partially substantiated" and this clearly reflected the need to improve our service in some areas, in particular, the tact and skills for effective communication. On each occasion, we counselled the staff concerned on their deficiencies for future improvement.

5.21 As for complaints on work systems and procedures, most of them were concerned with the time taken to conclude our inquiries or investigations. The heavy workload this year, coupled with the complex nature of some cases, had inevitably lengthened the processing time on some occasions. Nevertheless, we tried our best to conclude most of the cases within the six months as pledged. We treasure the lessons learned for streamlining our practices for more efficient and effective service delivery.

5.22 Broadly speaking, complaints against our staff often arose from dissatisfaction with our conclusions and decisions on their cases against Government departments and public organisations. These are really comments on our findings and perhaps the quality of our inquiries. In this regard, where we have ground for review and revisions, we will do so. Basically, we endeavour to do our best in the interest of fair and objective investigation.

Fig. 5.7

Complaints against the Office concluded in 2008/09				
Nature	**Substantiated**	**Partially Substantiated**	**Unsubstantiated**	**Incapable of Determination**
Staff manner (including delay and negligence)	-	4	4	1
Work systems and procedures	-	1	3	-
Both staff manner and work systems and procedure	-	-	-	2
Total	**15**			

Chapter 6

Publicity and External Relations

6.1 Public support is essential to the promotion and development of ombudsmanship. In striving for objective, independent and impartial investigation, we endeavour to communicate with the public and various stakeholders to promote a positive view of complaints.



Fig. 6.1 The Ombudsman in Press Event

Promotion Campaign in Mass Media

6.2 With the increased public awareness of our role and mission, evidenced by the rising number of enquiries and complaints, we have adjusted our promotion strategies. Instead of broadcasting our Announcement of Public Interest ("API") film clip, greater emphasis has been placed on disseminating fuller information on our investigative work through media releases and press conferences.

Fig. 6.2

Press Conferences/Public Announcements	
26 June 2008	• Announcement of findings of direct investigation on effectiveness of Integrated Call Centre in handling complaints • Announcement of findings of anonymised investigation into complaints against Hong Kong Examinations and Assessment Authority • Declaration of direct investigation into system for development of question papers in public examinations
5 October 2008	• Declaration of direct investigation into Housing Department's handling of complaints involving property damage or minor injuries
20 November 2008	• Declaration of direct investigation into granting of disability allowance and processing of appeals by Social Welfare Department
11 December 2008	• Declaration of direct investigation into free admission scheme for leisure facilities by Leisure and Cultural Services Department
18 December 2008	• Announcement of findings of direct investigation on: i. Government's measures for street management ii. Control of roadside banners iii. Prevention of abuse of special grants under the CSSA scheme
15 January 2009	• Declaration of direct investigation into the monitoring of lift safety by Electrical and Mechanical Services Department
26 February 2009	• Declaration of direct investigation into the administration of the Code on Access to Information
19 March 2009	• Declaration of direct investigation into the procedures for enforcing the Driving-offence Points System by Transport Department
26 March 2009	• Announcement of findings of direct investigation on: i. Support for students with specific learning difficulties ii. Free admission scheme for using Leisure and Cultural Services Department's leisure facilities from July to September 2008

6.3 This year, we announced at our press conferences the results of six direct investigations as well as an investigation into topical complaints, we also declared the initiation of seven direct investigations. Summaries of the investigation reports were also publicised through the *OmbudsNews*, our newsletter, apart from being uploaded on our website.

Resource Centre

6.4 We operate a Resource Centre, which houses a wealth of Ombudsman-related publications, including our *OmbudsNews*, video recordings and news clips on our activities as well as periodicals from overseas ombudsman offices.

6.5 Members of the public are welcome to visit our Resource Centre on individual or group basis. This year, there were visitor groups from all walks of life, ranging from youth and elderly centres to schools and other community organisations. During the visits, our staff brief visitors on our role and invite them to express views on our operation. We regard these visits as important opportunities for civic education and exchange of views. In 2008/09, we had about 678 persons from 16 groups visiting our Office.

6.6 We strongly believe that citizens should be nurtured with proper social and civil values from their childhood. Therefore, the younger generation has always been the target of our promotional programmes and activities. Our experience has, however, revealed that primary school pupils, probably due to their younger age, are not as receptive as secondary school students to our messages. In this connection, we have adjusted our focus this year by arranging more talks for secondary school students. In the coming year, we shall continue in this direction and work out tailor-made programmes to maximise the effect of our educational initiatives.

Fig. 6.3

Group Visits to Resource Centre		
From	**Groups**	**Visitors**
Schools	7	253
Youth centres	4	190
Elderly centres	4	200
Others	1	35
Total	**16**	**678**

Publications

6.7 This year, we have updated our "Complaint Form", "Publicity Leaflet" and "Performance Pledge" for clearer and accurate information on our service. These publications are available in our Resource Centre, on our website and in District Offices of the Home Affairs Department.



Fig. 6.4 Publications of our Office (Performance Pledge, Complaint Form, Leaflet, Tips Booklet)

Chapter 6

Publicity and External Relations

The Ombudsman's Awards

6.8 We believe positive service culture should be applauded and encouraged among Government departments and public bodies. In this connection, we honour efforts of public organisations and their officers exemplary in handling complaints and improving public administration with The Ombudsman's Awards annually. In October 2008, The Ombudsman presented the Awards to the Immigration Department (Grand Award), the Food and Environmental Hygiene Department and the Department of Health, and also 21 public officers. Over 130 representatives from more than 25 public organisations witnessed this honourable occasion.



Fig. 6.5 The Ombudsman's Awards Presentation Ceremony

Fig. 6.6

Winning Organisations for 2008
• Immigration Department (Grand Award)
• Food and Environmental Hygiene Department
• Department of Health

Fig. 6.7

Individual Awards for 2008

Organisation	No. of Awardees
Buildings Department	1
Companies Registry	1
Correctional Services Department	1
Customs and Excise Department	1
Drainage Services Department	1
Efficiency Unit	1
Electrical and Mechanical Services Department	1
Food and Environmental Hygiene Department	2
Highways Department	1
Hospital Authority	1
Housing Department	2
Immigration Department	1
Inland Revenue Department	1
Mandatory Provident Fund Schemes Authority	1
Marine Department	1
Social Welfare Department	1
Transport Department	1
Urban Renewal Authority	1
Water Supplies Department	1

Seminars

6.9 We promote the mission of the Office among different sectors by organising seminars periodically. In April 2008, we organised a seminar for assistants of District Councillors.

6.10 Later in mid-May, I also met with Chairmen and Vice-chairmen of the 18 District Councils, who are well positioned to feel the pulse of the

community. On the occasion, I made use of the opportunity to share with the District Councillors feedback on issues of community concern. That was a most fruitful exchange on improving public administration.

Outreach Talks

6.11 Apart from receiving visitors, we also reach out to deliver talks to Government departments, schools, universities and centres for the elderly. This year, we visited a total of seven Government departments and public organisations.

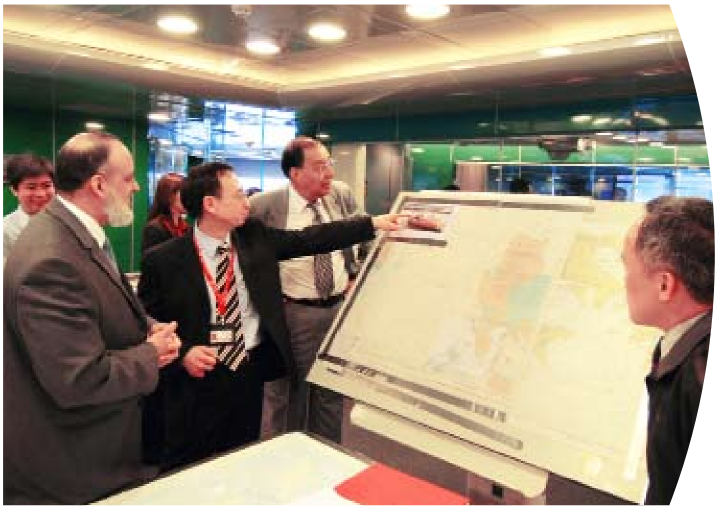


Fig. 6.8 JPs' Visit to Marine Department

Meeting with Legislative Councillors

6.12 I meet with Members of the Legislative Council ("LegCo") annually to keep them abreast of our work and daily operation.

6.13 The meeting on 9 December 2008 was my last meeting with Members in my tenure as The Ombudsman. We had frank and open exchanges on the role of The Ombudsman, as well as areas of special concern and public interest which I had encountered over the years. Members also expressed their views on the future development of the ombudsman system in Hong Kong in the light of the recent review of The Ombudsman's jurisdiction. In conclusion, they were all supportive of the role of The Ombudsman as watchdog for fair and efficient public administration.

Support from Justices of the Peace

6.14 Since 1996, over 500 non-official Justices of the Peace ("JPs") have been enlisted in our JPs Assistance Scheme. We appreciate their support in spreading the message of ombudsmanship and strengthening linkage between the community and the Office throughout the years. To keep our JP members updated on the operation of public services, we organise regular visits to Government departments and public organisations in our Schedule 1 to The Ombudsman Ordinance. This year, we arranged for them visits to the Marine Department and the Urban Renewal Authority. They highly valued these opportunities for widening their horizon in the operations and delivery of public services.

Institutional Liaison and Exchange with the Mainland

6.15 As the Secretary of both the International Ombudsman Institute ("IOI") and the Asian Ombudsman Association ("AOA"), I actively participate in their functions to maintain close connections with our counterparts worldwide. This year, I attended the AOA Board of Directors Meeting in Iran in late April 2008.

6.16 My office hosted this year's annual IOI Board of Directors Meeting from 5 to 8 November 2008. After the Board meeting, a visit to the Commission Against Corruption of Macao was arranged for Board Members and their accompanying persons.

6.17 Immediately following the activities in Hong Kong, the IOI President and several Board Members including myself visited Beijing at the invitation of the Ministry of Supervision ("MOS") of China. The delegation was received personally by



Fig. 6.9
IOI Board of Directors Meeting

the Minister of Supervision. Both the President and Members were briefed on China's system of supervision and the policy and work priorities of MOS with special emphasis on anti-corruption and administrative supervision of Government agencies in China. Through meetings and visits, IOI Members gained insight into the historical, cultural and political background of the supervisory system in China.

6.18 I consider these activities not only an effective platform to exchange views and share experience with our counterparts on matters of common concern but also opportunities to showcase Hong Kong as a sophisticated city and to maintain its status in the international arena. Moreover, this reinforces our role in strengthening links between China with the regional and international ombudsmen.

6.19 Since 1996, we have maintained an exchange programme with the China Supervision Institute. The annual exchange visit for 2008/09 was, however, suspended due to the catastrophic earthquake in Sichuan in May 2008. We will liaise with the Institute for resuming the programme.

6.20 Despite suspension of exchange visits, we have continued to conduct briefing sessions on our jurisdiction and *modus operandi* for groups from the Mainland. This year, we delivered talks to nine groups comprising 151 participants.

Looking Forward

6.21 We will regularly review our promotion strategies, assess the effectiveness of our activities and adjust our programmes in the light of the changing economic and socio-political scene.



List of Annexes

Annex 1

List of Scheduled Organisations

Organisations Listed in Part I of Schedule 1, Cap. 397

1. All Government departments/agencies except the Independent Commission Against Corruption, the Hong Kong Auxiliary Police Force, the Hong Kong Police Force, the Secretariat of the Independent Police Complaints Council and the Secretariat of the Public Service Commission
2. Airport Authority
3. Employees Retraining Board
4. Equal Opportunities Commission
5. Financial Reporting Council
6. Hong Kong Arts Development Council
7. Hong Kong Housing Authority
8. Hong Kong Housing Society
9. Hong Kong Monetary Authority
10. Hong Kong Sports Institute Limited
11. Hospital Authority
12. Kowloon-Canton Railway Corporation
13. Legislative Council Secretariat
14. Mandatory Provident Fund Schemes Authority
15. Privacy Commissioner for Personal Data
16. Securities and Futures Commission
17. The Hong Kong Examinations and Assessment Authority
18. Urban Renewal Authority
19. Vocational Training Council
20. West Kowloon Cultural District Authority

Organisations Listed in Part II of Schedule 1, Cap. 397

1. Independent Commission Against Corruption
2. Hong Kong Auxiliary Police Force
3. Hong Kong Police Force
4. Secretariat of the Independent Police Complaints Council
5. Secretariat of the Public Service Commission

Annex 2

Circumstances Where Complaints are not Followed Up or Investigated

Actions not Subject to Investigation - Schedule 2, Cap. 397

1. Security, defence or international relations
2. Legal proceedings or prosecution decisions
3. Exercise of powers to pardon criminals
4. Contractual or other commercial transactions
5. Personnel matters
6. Grant of honours, awards or privileges by Government
7. Actions by the Chief Executive personally
8. Imposition or variation of conditions of land grant
9. Actions in relation to Hong Kong Codes on Takeovers and Mergers and Share Repurchases
10. Crime prevention and investigation actions by Hong Kong Police Force or Independent Commission Against Corruption

Restrictions on Investigation of Complaints - section 10(1), Cap. 397

1. Complainant having knowledge of subject of complaint for more than two years
2. Complaint made anonymously
3. Complainant not identifiable or traceable
4. Complaint not made by person aggrieved or suitable representative
5. Subject of complaint and complainant having no connection with Hong Kong
6. Statutory right of appeal or remedy by way of legal proceedings (except judicial review) being available to complainant

Circumstances Where The Ombudsman may Decide not to Investigate - section 10(2), Cap. 397

1. Investigation of similar complaints before revealed no maladministration
2. Subject of complaint is trivial
3. Complaint is frivolous or vexatious or is not made in good faith
4. Investigation is, for any other reason, unnecessary

ANNEX 3

ACHIEVEMENT OF PERFORMANCE PLEDGES

(1 April 2008 to 31 March 2009)

(A) Enquiries*

	Response Time		
By telephone or in person	Immediate	Within 30 minutes	More than 30 minutes
	13,848 (100%)	0	0
In writing	Within 5 working days	Within 6-10 working days	More than 10 working days
	216 (97.7%)	3 (1.4%)	2 (0.9%)

* Excluding enquiries on existing complaints.

(B) Complaints**

	Response Time		
Initial assessment / acknowledgement	Within 5 working days (target: 80%)	Within 6-10 working days (target: 20%)	More than 10 working days
	4,962 (99.8%)	9 (0.18%)	1 (0.02%)

** Excluding complaints to others copied to us and cases outside jurisdiction or under restriction.

	Cases outside jurisdiction or under restriction			Other cases		
Cases concluded	Within 10 working days (target: 70%)	Within 11-15 working days (target: 30%)	More than 15 working days	Less than 3 months (target: 60%)	Within 3-6 months (target: 40%)	More than 6 months
	855 (77.17%)	217 (19.58%)	36 (3.25%)	3,028 (65.93%)	1,483 (32.29%)	82 (1.78%)

(C) Group Visits and Talks

	Response Time	
Requests for guided group visits	Within 5 working days	More than 5 working days
	19 (100%)	0
Requests for outreach talks	Within 10 working days	More than 10 working days
	12 (100%)	0

Annex 4

Panel of Professional Advisers

Engineering

Mr Francis Shu-ying BONG

Mr Yan-kee CHENG

Mr Joseph Ming-kuen CHOW

Dr Raymond Chung-tai HO

Mr Edmund Kwong-ho LEUNG

Mr Vincent Kam-chuen TSE

Mr Chi-tin WAN

Mr Siu-kai WAN

Mr Patrick Se-kit YUEN

Legal

Mr Brian G. BAILLIE

Mrs Anne R. CARVER

Professor Johannes M.M. CHAN

Professor M.J.A. COORAY

Mr Anson Kam-choy KAN

Dr Man-chiu LO

Professor Dhirendra K. SRIVASTAVA

Mr Benny Y.T. TAI

Professor Gui-guo WANG

Medical

Professor T.K. CHAN

Professor P.C. HO

Professor Kar-neng LAI

Professor Felice Lieh-MAK

Professor John WONG

Dr Chung-kwong WONG

Professor C.Y. YEUNG

* In alphabetical order

Annex 5

Glossary of Terms

Complaint

A complaint is a specific allegation of wrong doing, unreasonable action or defective decision which affects and aggrieves the complainant.

Complaint Not Undertaken

This is a complaint which The Ombudsman has decided not to process further after considering all its circumstances, e.g. whether there is sufficient *prima facie* evidence of maladministration.

Complaint to Others Copied to Us

This is a complaint addressed to another organisation and copied to The Ombudsman with no request for action. It may become a complaint if The Ombudsman sees reasons to intervene.

Direct Investigation ("DI")

This is an investigation initiated in the public interest even in the absence of complaint and generally on matters of a systemic nature or wide community concern.

Direct Investigation Assessment

This refers to the preliminary examination and assessment on a potential subject for direct investigation. It is dubbed a "mini direct investigation" where substantial information has been collected during the process and on completion of assessment, a fuller inquiry is found to be not necessary.

Discontinuation of Complaint

This is the cessation of inquiries into a complaint for reasons such as insufficient information or evidence from complainants and lack of complainants' consent for access to their personal data.

Enquiry

An enquiry is a request for information or advice. It is not yet, but may develop into, a complaint.

Full Investigation

This refers to an in-depth inquiry, usually into complex or serious complaints and invariably with recommendations for improvement or remedy upon conclusion.

Inconclusive*

This is a situation where, at the end of a full investigation, The Ombudsman is not prepared to draw any conclusion on a complaint because the evidence is conflicting, irreconcilable, incomplete or uncorroborated.

Internal Complaint Handling Programme ("INCH")

This is a form of preliminary inquiries for relatively simple cases. With the consent of the complainant, we refer a case to the organisation concerned for investigation and reply direct to the complainant, with a copy to this Office. If the reply does not fully address the complaint, The Ombudsman may decide to continue with the inquiries.

Investigation

This may be a full investigation into a complaint or a direct investigation without a complaint.

Maladministration

This is defined in The Ombudsman Ordinance. It basically means poor, inefficient or improper administration including unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for a person.

Mediation

This is a voluntary process carried out where the complainant and the organisation concerned agree to meet to discuss the complaint and to explore mutually acceptable solutions. Investigators from this Office act as impartial facilitators.

Outside Jurisdiction

This refers to the situation where the action or organisation subject to complaint is not within The Ombudsman's jurisdiction under The Ombudsman Ordinance.

Preliminary Inquiries

These refer to inquiries to determine whether a full investigation is necessary.

* Previously "Incapable of Determination"

Annex 5

Glossary of Terms

Rendering Assistance / Clarification ("RAC")

This is another form of preliminary inquiries where INCH is considered inappropriate. After assessing all relevant facts, and considering a full investigation not necessary, this Office presents to the complainant and the organisation under complaint our findings with improvement or remedial suggestions.

Restrictions on Investigation

These are the restrictions on investigation under The Ombudsman Ordinance.

Substantiated other than Alleged

This is where a complainant's allegations are unsubstantiated but The Ombudsman discovers other aspects of significant maladministration and comments on those other deficiencies.

Substantiated, Partially Substantiated and Not Substantiated

These reflect the varying degrees of culpability of an organisation under complaint on conclusion of a full investigation.

Topical Complaints

These are complaints on a particular social or topical issue. They are essentially against the same action or decision by the complainee organisations.

Withdrawal of Complaint

This is a complainant's voluntary withdrawal of a complaint. However, depending on the nature or gravity of the allegations, The Ombudsman may still decide to continue the investigation.

Annex 6

Examples of Improvement Measures Introduced by Organisations Following Our Recommendations or Initiated after Commencement of Our Inquiries

(a) Guidelines for clarity, consistency or efficiency in operation	
Organisation* (Case reference)	**Administrative Enhancement**
AFCD (2007/3792)	Timeframe set for processing application for exhibition licence of animals and birds
FEHD (2007/2407)	New internal guidelines implemented to ensure that assessments of layout plans are completed and site inspections conducted within relevant stipulated timeframes
Imm D (2008/0077)	Procedures streamlined for refunding passport application fees to ensure that the Treasury will be informed of its decision within 20 working days upon receipt of request
JO# (2006/2188 & 2006/2942)	Performance pledge and specific timeframe introduced for investigating water seepage cases with effect from 1 April 2008
Lands D (2006/0415)	Departmental instructions in handling application for new burial ground revised to define clearly Lands Department's role
Plan D (2007/3507)	Procedures streamlined for prosecuting illegal development of Government land and shorter grace period given for rectifying breaches
PO (2006/3182)	Proper file records kept on justifications for approving the installation of additional posting boxes and policy reviewed on the collection services and the charges for "private posting boxes"

(b) Better arrangements for inter-departmental coordination	
Organisation* (Case reference)	**Administrative Enhancement**
AMS (2007/4867)	Guidelines agreed and issued by AMS and FSD's Ambulance Service for clear records to be kept on transfer of patients from the former to the latter
BD & JO# (2008/2004 & 2005)	Clearer guidelines issued on work interface between JO and BD in handling seepage complaints with alleged building safety implications
JO# (2007/4838 & 4839)	Agreement reached between BD and FEHD on procedures where FEHD will not refer seepage cases to BD for Stage III investigation
FEHD (2008/3880)	For seepage cases where FEHD staff in JO consider it unnecessary to conduct a Stage II investigation, agreement reached for the former to obtain prior consent from their BD counterparts before referring such cases to them for Stage III investigations
GS (CS Office) – EU & Lands D (2007/4623 & 4624)	Relevant Technical Circular revised to define more clearly the division of responsibilities among various departments on maintenance of vegetation and to require the department receiving a complaint to attempt to identify and refer the case direct to the responsible department for action, instead of merely advising the complainant that the receiving department is not responsible for the matter

* see Table 4 for the full name of the organisation against the acronym.
JO refers to the Joint Office set up by BD and FEHD for handling seepage complaints.

ANNEX 6

EXAMPLES OF IMPROVEMENT MEASURES INTRODUCED BY ORGANISATIONS FOLLOWING OUR RECOMMENDATIONS OR INITIATED AFTER COMMENCEMENT OF OUR INQUIRIES

(c) Measures for better public enquiry/complaint handling

Organisation* (Case reference)	**Administrative Enhancement**
AFCD (2008/1162)	Information provided to the 1823 Call Centre on the arrangement for "home quarantine" for animals implicated in dog-bite cases to ensure that parties concerned in such cases can be adequately informed

(d) Measures for better service

Organisation* (Case reference)	**Administrative Enhancement**
HA (2008/0005)	New procedures introduced requiring non-emergency ambulance staff to confirm vehicle arrival time with patients in advance and advise patients when late arrival is anticipated
HD (2007/3282)	With TD advice, road signs and facilities added to enhance road safety of a restricted road in a public housing estate
Hy D & WSD (2006/1337, 3326, 3327 & 3328)	Bring-up system set up by Hy D to closely monitor organisations responsible for the final reinstatement of road facilities and arrangements made to strengthen coordination with E&MSD in the inspection and maintenance of bollard lights Measures introduced by WSD to improve its records management system and to better supervise the work of its contractors
JUD (2008/0064)	Initiative will be taken to seek approval from the magistrate for amending relevant record when it is known that a defendant has changed his address
MPFA (2008/6161)	Processing time for cases of employers' default in contribution to the Mandatory Provident Fund shortened with increased manpower and redeployment of resources
ORO (2007/4359)	Measures introduced to give timely information to a bankrupt regarding the realisation and distribution of his assets
SFAA (2006/4428)	Closer supervision of courses funded by the Continuing Education Fund with clauses introduced to the "Guide to assessment of courses for non-self-accrediting course providers" about registration under the Education Ordinance and fulfillment of the statutory requirements
TD (2008/1509)	To facilitate illiterate candidates, new arrangements will be introduced for using computer to conduct an oral test and allowing candidates to choose freely whether to take a Part A exam in written or oral form

* see Table 4 for the full name of the organisation against the acronym.

(e) More reasonable rules and charges	
Organisation* (Case reference)	**Administrative Enhancement**
LCSD (2007/5335)	Rental for use of the climbing wall in a sports centre reduced after a review, with the decision to exclude the "buffer area" between the wall and the adjacent badminton courts from the total chargeable area
WSD (2007/5267)	Administrative instructions revised to provide clearer internal guidelines on the handling of requests for adjustments of charges arising from inaccurate consumption readings registered by defective meters
HAD (2008/0972)	The practice scrapped which required users of Community Halls to pay the difference in rental resulting from upward adjustment of rental by HAD after booking

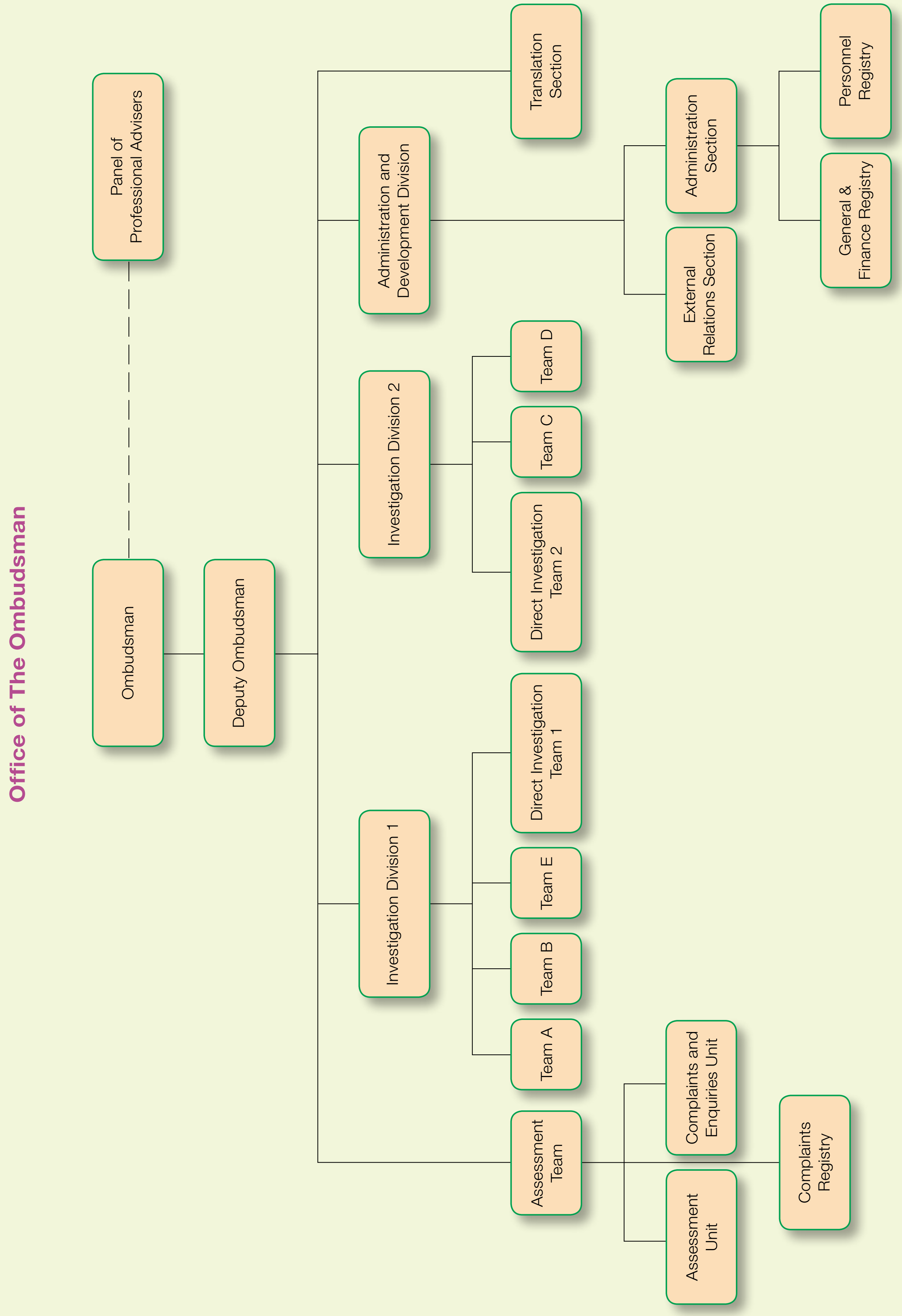
(f) Clearer information to the public	
Organisation* (Case reference)	**Administrative Enhancement**
C&ED and FEHD (2008/3258-59)	Positive measures taken to alert visitors of the restrictions on importing raw meat into Hong Kong
HD (2007/4217)	Measures introduced to inform new tenants or those granted transfers of the possibility that HD may require them to transfer again during the period of the tenancy, to avoid misunderstanding and unnecessary dissatisfaction
EPD (2008/1855)	Procedures improved to notify vehicle owners of the grace period given and the need to repair the engine
Imm D (2008/1984)	Clearer information given, in the guidance notes on application for HKSAR passport and by each immigration office, on the service hours of the department's drop-in boxes

(g) Training for staff	
Organisation* (Case reference)	**Administrative Enhancement**
HD (2007/0310)	Training and guidelines provided to staff and management companies on handling of cases with single tenants having passed away in their public rental housing units
Imm D (2008/2450)	Guidelines revised to enhance frontline staff's understanding of the procedures for amending particulars of an HKSAR passport

* see Table 4 for the full name of the organisation against the acronym.

ANNEX 7

ORGANISATION CHART



Annex 8

Visits to the Office of The Ombudsman

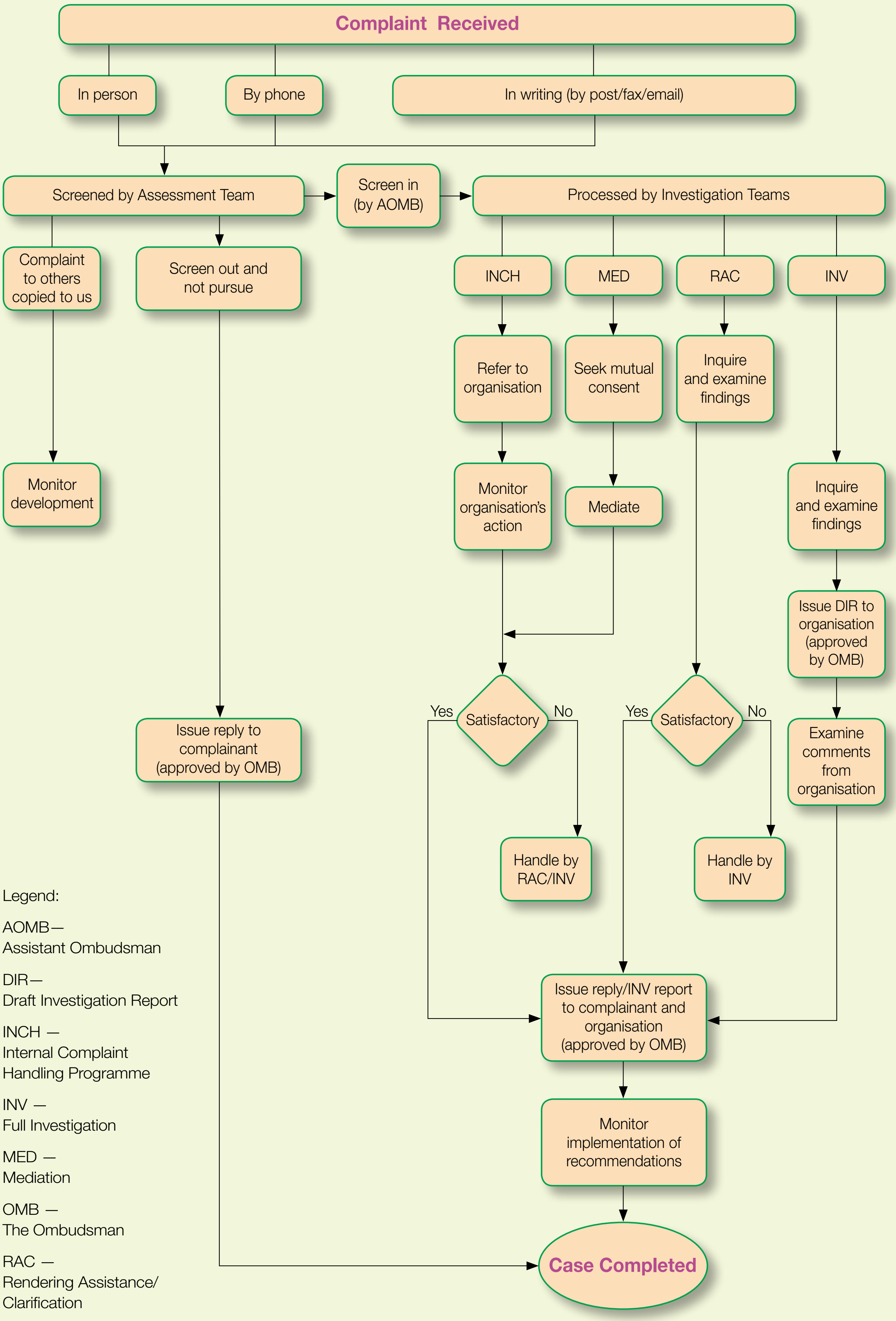
Date	Visitors*
16 Apr 2008	Mr Wang Yong-jun, Director-General, Foreign Affairs Department of Ministry of Supervision, China
22 May 2008	Senior judicial officials from Guangzhou, China
30 May 2008	Delegates from the Supreme People's Court, China
6 Jun 2008	Delegates from Training Scheme in Common Law for Mainland Officials 2007/08
18 Jun 2008	Delegates from Chongqing Municipal People's Government, China
1 Aug 2008	Thai Senate Standing Committee on Studying and Inspecting Corruption and Strengthening Good Governance
13 Aug 2008	Delegates from Sub-committee on Anti-Corruption and Good Governance, Timor-Leste
16 Sep 2008	Delegates from Henan Provincial People's Government, China
30 Sep 2008	Delegates from Peking University and Wuhan University, China
16 Oct 2008	Representatives from Office of the Anti-Corruption and Civil Rights Commission, South Korea
29 Oct 2008	Delegates from Shantou University, China
10 Nov 2008	Delegates from Shanghai Municipal People's Government, China
20 Nov 2008	Participants of the 6th Postgraduate Certificate Course in Corruption Studies, organised by School of Professional and Continuing Education, University of Hong Kong
27 Nov 2008	Delegates from Jiangxi Provincial People's Government, China
26 Feb 2009	Mr Zhao Da-cheng, Vice Minister, Ministry of Justice, China
26 Mar 2009	Mr Tang Hai-nan, Chairman, Tianjin Municipal Supervision Bureau, China

* Excluding group visits from local schools and social service agencies



Annex 9

Flow Chart on Handling of a Complaint



Legend:

AOMB—
Assistant Ombudsman

DIR—
Draft Investigation Report

INCH —
Internal Complaint Handling Programme

INV —
Full Investigation

MED —
Mediation

OMB —
The Ombudsman

RAC —
Rendering Assistance/
Clarification

ANNEX 10

SUMMARIES OF DIRECT INVESTIGATIONS

Education Bureau ("EDB")

Case No. OMB/DI/180
Support Services for Students with Specific Learning Difficulties
(Investigation declared on 14 February 2008 and completed on 23 March 2009)

Background

This was the third of a series of direct investigations on support for students with Specific Learning Difficulties ("SpLD"). It focused on EDB's measures for schools in the public sector to provide support services to SpLD students.

Our Findings

EDB Support to Schools

Assessment Tools and Resource Packages

2. EDB has developed:

(a) assessment tools for early identification of SpLD students; and

(b) guidelines, teaching and learning kits for teachers to help students improve their literacy and learning skills.

Additional Funds and Resources

3. EDB provides additional resources under different support schemes, including funds and manpower, to schools with students having SpLD, other special educational needs or significantly low academic achievement.

Professional Services

4. EDB sends its own or outside educational psychologists to serve public sector schools on a need basis. The Bureau also organises professional development seminars for school personnel and operates a Special Education Resource Centre.

Teacher Training

5. Hong Kong Institute of Education is the only institute offering a compulsory module on special educational needs in pre-service teacher training.

6. For serving teachers, EDB has put in place a five-year professional development framework, consisting of structured courses on special educational needs at three levels: basic (30 hours), advanced (90 hours) and thematic (60 hours). EDB expects 10% of teachers to have completed basic training by 2012/13.

EDB Monitoring and Feedback Systems

School Self-Evaluation and External Review

7. Under school-based management, schools are required to evaluate their own performance in catering for student diversity. EDB conducts external school review to validate self-evaluation by schools and to provide them with feedback and suggestions for improvement.

Regular School Visits

8. EDB officers make about three inspection visits each school year to ensure that schools are providing proper support to students with special educational needs.

Specific Requirements for Schools

9. Schools receiving additional funds and resources are required to:

(a) prepare separate accounting for the funds;

(b) publicise the measures taken to support students with special educational needs; and

(c) devise a learning support plan for each of such students.

Redress System

10. EDB has established a mediation mechanism to handle complaints and grievances from parents about education opportunities for students with special educational needs.

Our Comments

11. EDB has been making substantial efforts and injecting additional funds and other resources into the education system to improve services for students with SpLD. EDB support is generally well conceived. However, we have identified a number of issues for attention and improvement.

Funding and Resource Support

12. Under EDB's support schemes, funds and manpower are allocated to schools on top of basic and other EDB provision. Schools are encouraged to pool all available resources holistically and deploy them flexibly for optimal cost-effectiveness.

13. This "global" approach, however, risks overlooking the specific needs and goals in respect of individual students who do not conform to the needs and goals of the "mainstream" student body. Some parents are highly suspicious that funds intended for redressing special educational needs have been used by schools for other priorities. Openness and transparency on school policy and measures for supporting students with special educational needs are called for.

14. However, publicity on support measures seems to have been left entirely to the school management. Not surprisingly, practices differ among schools. There is also no timeline for schools to develop a more transparent policy.

Monitoring and Feedback Systems

15. EDB's additional funds and resources for support services are not earmarked for individual students or groups, so their effective utilisation depends entirely on how enlightened, liberal and accountable the school management wants to be.

16. Parental involvement is crucial to the effectiveness of schools' support measures for feedback on whether the measures are effective. Moreover, parents can provide home help to reinforce their children's learning. However, practice for promoting parental involvement varies significantly from school to school.

17. Some parents dare not stand up to the school management in their quest for support for their children. EDB records show that only one parent had used its mediation service from 2005/06 to 2007/08.

Professional Services

18. Shortage of educational psychologists is a chronic problem in Hong Kong. In 2007/08, on average, each educational psychologist had to carry over 140 cases of students with special educational needs.

Teacher Training

19. Not all teacher education institutes offer prospective teachers training in special educational needs as a matter of their curriculum. EDB's in-service teacher training programme will, therefore, always be "catching up" and rather slowly at that.

20. At present, only 27% of primary school teachers and 11% of secondary school teachers in the public sector have received basic training in SpLD. EDB's target of providing only 10% of teachers with basic training in special educational needs through structured courses by 2012/13 leaves much to be desired.

Recommendations

21. The Ombudsman made ten recommendations for EDB, including:

(a) to step up efforts and formulate a timeline for enhancing openness and transparency among schools on the latter's policy, resources and measures for supporting students with SpLD and other special educational needs;

(b) to require, and help, all schools to enhance parental involvement;

(c) to enhance publicity on the Bureau's mediation service;

(d) to probe into schools suspected of having recurrent or systemic problems;

(e) to consider introducing scholarships or bursaries for professional training in educational psychology, with a requirement for service with Government over a specified period;

(f) to explore the possibility of making training in special educational needs compulsory in all pre-service teacher training programmes; and

(g) to review the target for basic training in SpLD for teachers.

Efficiency Unit ("EU")

Case No. OMB/DI/161
Effectiveness of the Integrated Call Centre in Handling Complaints
(Investigation declared on 17 May 2007 and completed on 23 June 2008)

Background



Since our direct investigation in 2003 into the overall operation of the Integrated Call Centre ("ICC") to examine its effectiveness in handling complaints against Government departments, we had continued to receive complaints about its complaint-handling. Concerned that this might suggest new or continuing systemic deficiencies in ICC's arrangements, The Ombudsman decided to conduct a follow-up investigation on the subject.

Service Coverage

2. Managed and supervised by EU, ICC was set up in July 2001 to provide a single point of contact round-the-clock for enquiries, complaints and suggestions about services of Government departments participating in ICC service. The ultimate aim was to replace the myriad of departmental hotlines, fax numbers and email addresses with a Citizen's Easy Link 1823.

3. At the time of investigation, ICC service covered 20 departments with a total of 104 hotlines, fax lines and emails. ICC also kept a full register of complaints received through all channels for three client departments: Highways Department, Leisure and Cultural Services Department and Transport Department.

Demand for ICC Service

4. In the four years 2004 to 2007, citizens' demand for ICC service increased markedly, from 1.8 million in 2004 to 3.1 million in 2007.

5. Despite EU's attempt to increase the number of ICC staff and to devise new measures to cope with increasing demand, staff turnover and manpower shortage remained a major concern. EU estimated that ICC would be operating to full capacity of 230,000 calls a month while fulfilling all the performance pledges within 2008.

6. In 2007, ICC had to reject six departments' requests for subscription. Some client departments, e.g. the Post Office ("PO"), once considered dropping out of the ICC system because ICC could not extend its service to cover all PO's branch offices.

Overall Performance

7. In the four years 2004 to 2007, ICC was unable to achieve its overall performance pledge of answering at least 80% of calls within 12 seconds, managing only to answer within the timeframe 74% of the calls in 2004, 62% in 2005, 78% in 2006 and 68% in 2007. Nonetheless, ICC managed to meet other performance pledges, namely, to resolve at least 90% of calls at first point of contact and to have not more than 10% of the calls abandoned.

ICC's Role in Handling Complaints

8. Complaints made up about one-tenth of all types of cases answered by ICC (i.e. enquiries, complaints, suggestions and compliments). ICC website, as ICC's main source of public information, did not explain its precise role in this area. It merely stated ICC as handling and processing complaints for the participating departments and providing an effective platform for resolving cross-departmental complaints.

Our Observations and Opinions

Scope of Service

9. Covering only one-third of the 58 Government departments and agencies, ICC's scope of service did not accord with its name or its ultimate goal of an integrated one-stop service, namely to replace all departmental hotlines with 1823. Nor did it have a concrete plan to achieve it.

10. ICC service was limited and patchy, not taking over all the hotline functions even of the 20 client departments. To the majority of Government departments, ICC essentially provided only directory service. Meanwhile, ICC was already operating at full capacity.

Capability

11. There was incongruence between ICC's capability and its accountability. Neither ICC nor EU was vested with the authority or had the expertise to handle substantive complaints, to command a department to take ownership of a complaint or to take departments

to task for deviating from agreed timeframes and arrangements. While totally dependent on departments for referral instructions, ICC was heavily relied on by citizens to identify responsible departments when no department accepts responsibility for a complaint. This resulted in significant delay and inaction.

Capacity

12. ICC's continued manpower shortage has adversely affected its operation: failure to meet its long-term goal, delay, continued failure to meet its pledge and risk of existing clients opting out.

13. We consider ICC's endeavour to act as central repository for three departments, despite its tight manpower situation, over-ambitious and arguably beyond its core functions.

Other Problems in Handling Complaints

Monitoring and Feedback

14. Our study revealed that its monitoring mechanism did not significantly reduce the time departments spent in identifying ownership for complaints. Moreover, ICC did not systematically gauge the compliance rate of the specific action standards and timeframes or complainant satisfaction.

Mode of Operation and Supervision of Cases

15. ICC's current mode of operation required individual agents to review records on screen for the status and development of complaints within a short time. This was difficult for complicated complaints and cases for urgent attention.

Public Perception

16. The way ICC publicised its role could easily mislead complainants to think that ICC may adjudicate and pass judgment on their cases.

Indirect Communication

17. ICC's handling complaints on behalf of departments shielded the latter from direct contact with complainants. This is not only cumbersome and irksome for complainants, but may also cause defective or deficient delivery and delay.

Conclusions

18. We believe in the concept of an integrated one-stop call service for public convenience and Government efficiency. Overall, we commend ICC's performance as a call centre, particularly its continuous and earnest efforts to sustain service standards and strive for improvement, notwithstanding the high call volume and manpower constraint.

19. Considering its track record of resolving over 90% of nearly 10,000 calls each day at first point of contact, ICC is well placed to be a truly integrated call centre covering all Government departments and even public bodies for enquiries and simple complaints.

20. However, the handling of more complex complaints – especially those with multiple departments – leaves much to be desired. ICC inherently lacks the capability to coordinate among Government departments in handling issues involving multiple departments.

21. The current situation, where ICC continues to fall short of its goal of serving all departments, is misleading to the public, unsatisfactory in principle and defeats ICC's value and purpose as an all-time access point transcending departmental boundaries.

22. ICC has to choose whether its scope of service encompasses the entire Government or some departments. Meanwhile, until the Administration has decided ICC's scope of service in the long term, it should improve ICC's current operations, especially in handling complaints.

Recommendations

23. The Ombudsman made 15 recommendations for EU and ICC including:

Scope of service (Long-term)

(a) to review its *modus operandi* and to redirect its resources to offer a "one-stop service" for public sector directory, general enquiries and simple complaints. If not, to consider revising its name to accord with its limited service and to avoid unrealistic public expectations;

Operational and technical improvements (Short-term)

(b) to initiate discussion with bureaux to resolve problems with cross-departmental complaints;

(c) to alert and ask at once all departments involved to discuss and establish ownership among themselves, once a complaint case reveals unclear demarcation of responsibility among departments;

(d) to enforce the monitoring mechanism more proactively by escalating promptly any complaint, for which no department would accept responsibility, 14 days after receipt of the complaint;

(e) to gauge the compliance rates of the various timeframes and departmental performance pledges and to provide such data to Heads of Departments for monitoring purpose;

(f) to regularly survey the satisfaction level of client and non-client departments and complainants;

(g) to spell out in ICC website its role and service, procedures and timeframes and to request departments to clarify their relationship with ICC in departmental publicity measures; and

(h) to request departments to make direct contact with complainants and fellow-departments where complex or multiple issues are concerned.

Food and Environmental Hygiene Department ("FEHD"), Home Affairs Department ("HAD") and Lands Department ("Lands D")

Case No. OMB/DI/163
Street Management
(Investigation declared on 1 November 2007 and completed on 18 December 2008)

Street Management and District Administration



We examined three issues of street management:

- indiscriminate placing of skips at roadside;
- illegal parking of bicycles; and
- obstruction and nuisance from on-street promotional activities.

These involve several departments and require coordination.

2. Street management problems should come under Government's District Administration Scheme. In 2007, the Administration set up a Steering Committee on District Administration ("SCDA") to resolve such district management issues centrally. Difficult issues can be brought to the personal attention of the Chief Secretary for Administration.

Roadside Skips

Observations

3. According to Lands D procedures, staff should conduct an inspection upon receiving a complaint. If a skip is found, staff should post a notice giving the owner at least one day for removal. If the skip still remains after the deadline, Lands D should remove it within three working days.

4. Statistics since 2006/07 show that about 40% of Lands D inspections in fact took place over three working days after receipt of complaints, while some 20% took over five working days before re-inspection. Lands D's delay has little deterrent effect on offenders.

5. The construction and renovation industry needs to use skips but no lawful avenue exists for placing them at roadside. In 2007, SCDA invited Lands D to consider setting up a permit system for skips. Lands

D has explored various options but has yet to report to SCDA. The question of which department should be responsible for controlling skips remains a sticking point.

Recommendations

6. The Ombudsman made six recommendations, including:

   (a) SCDA to reconvene promptly;

   (b) Lands D to report to SCDA the results of its study on the proposed permit system; and

   (c) Lands D to tighten its timeframe for inspection and re-inspection, removal and confiscation of skips.

Illegal Parking of Bicycles

Observations

7. Illegally parked bicycles are usually cleared through joint operations initiated by HAD's District Offices ("DOs"), involving FEHD, Lands D and the Police. No department would take responsibility for bicycles in public transport interchanges ("PTIs"); enforcement is on ad hoc basis. In designated bicycle parks, a common problem is bicycles being abandoned, left unattended for a long time or overstaying.

8. Without more durable and innovative solutions, the situation is unlikely to improve. DOs have a leading role to formulate a comprehensive strategy.

9. The SCDA meeting in November 2007 agreed that HAD should explore the feasibility of immediate removal of illegally parked bicycles. However, the outcome is still pending.

10. As bicycles are a popular means of transport in the New Territories, parking facilities at convenient locations are necessary. The Administration should continue to identify sites to ease the shortfall in such provision so that cyclists would not be forced to park their bicycles illegally or have any excuse to do so.

Recommendations

11. The Ombudsman made seven recommendations, including:

   (a) DOs, in consultation with District Councils and other departments, to formulate a comprehensive strategy under the District Administration Scheme;

   (b) the Administration to identify sites for bicycle parking facilities;

   (c) HAD to expedite its feasibility study on immediate removal of illegally parked bicycles;

   (d) HAD and other departments to work out an inter-departmental agreement for clearing bicycles in PTIs; and

(e) HAD, in consultation with relevant other departments and district bodies, to explore ways of managing bicycle parks to encourage quicker turnover and deter prolonged parking.

On-street Promotional Activities

Observations

12. FEHD has powers to tackle those on-street promotional activities involving illegal hawking of goods, obstruction to cleansing operations and serious obstruction. For easy-mount stands, FEHD can take action against them for unauthorised display of "bills or posters". The stands can be seized together with the posters as evidence. FEHD has started to take prosecution action under a pilot scheme.

13. The Administration does not have a policy to tackle on-street promotional activities involving illegal hawking of services. It argues that some tolerance has to be given to on-street promotional activities, in order to maintain the employment opportunities provided by such activities. However, this argument may well apply to illegal hawking of goods with better justification since those employing mobile or easy-mount stands in fact tend to be major business corporations well able to afford other means of advertising and offer other modes of employment.

14. FEHD has difficulty in enforcement due to the mobile nature of on-street promotional activities. Its initiative to take action against easy-mount stands is not a full solution for illegal hawking of services.

Recommendations

15. The Ombudsman made six recommendations, including:

(a) the Administration to reconsider its stance on on-street promotional activities;

(b) FEHD to acquire statutory powers against illegal hawking of services; and

(c) Government in general, and FEHD in particular, to enhance public awareness of the problems caused by on-street promotional activities and to publicise convicted cases for deterrent.

Lands Department ("Lands D")

Case No. OMB/DI/177
Control of Roadside Banners
(Investigation declared on 19 September 2008 and completed on 15 December 2008)

Introduction

Lands D manages a scheme for the Display of Roadside Non-Commercial Publicity Materials ("the Scheme"). Government departments, Legislative



Council ("LegCo") Members, District Councils ("DCs"), DC Members and certain non-profit making organisations may put up roadside banners at designated spots for display for specified periods.

2. This investigation covered, *inter alia*, the unclear rules and misuse of the Scheme.

The Scheme

3. Under the Scheme, Lands D approves applications from organisations for displaying banners case by case, each for about two months. In contrast, LegCo and DC Members are allocated spots for the entire tenure of their office and their banners are not subject to prior vetting by Lands D. The number of designated spots totals 21,821. Lands D has published Guidelines for the Scheme, which govern, *inter alia*, the approved contents of banners.

Observations

Absence of Clear Statement of Objective

4. Roadside banners impact on the rights of citizens to traffic safety, unimpeded movement and a pleasant environment. Use of such banner display spots by the parties concerned is a privilege which ought to be justified on grounds of public interest. However, the Scheme lacks a clear statement of its objective to demonstrate such justification.

Lack of Rules to Avoid Transfer of Privilege

5. Any individual or organisation allocated a banner spot enjoys a privilege at public expense. Such privilege should not be regarded as a freely disposable proprietary right. However, there are no clear rules to prohibit transfer or "loaning out", nor a specific requirement for the allocatee to be conspicuously identified.

Loose Guidelines on Banner Contents

6. The Guidelines on the approved contents of banners are too loosely worded as to be useful public information. Nor can they adequately provide guidance for enforcement. For example, "events of public interest" and "information of general interest and benefit to the public" are all wide open to interpretation and may easily result in contention.

Inadequate Public Consultation

7. Lands D had consulted LegCoand DCs on the Scheme, but had not taken account of the fact that all LegCo and DC Members were beneficiaries of the Scheme and there could be a question of perceived bias.

Proposal Unjustifiably Shelved

8. Lands D had considered replacing the banner spots at central dividers of roads or close to pedestrian crossings with spots less prone

to traffic accidents. However, it subsequently dropped the proposal as it considered LegCo and DCs unlikely to agree to give up these prime sites. This Office found it unfair of Lands D to assume that LegCo and DC Members would not accept the proposal, which was based on self-evident public interest.

Recommendations

9. The Ombudsman recommended that:

Lands D in conjunction with the relevant bureaux

(a) articulate the objective of the Scheme for public information;

Lands D

(b) revise the rules for proper administration of the Scheme, including –

- prohibition of transfer of allocated spots
- clearly visible acknowledgement, on the banner, of the allocatee
- clear indication what banner contents may be allowed;

Lands D with the help of the Home Affairs Department

(c) seek views from the public at large or interest groups before consulting LegCo and DCs; and

(d) reconsider the proposal of replacing or cancelling the banner spots posing traffic hazard.

10. Lands D generally accepted these recommendations.

Leisure and Cultural Services Department ("LCSD")

Case No. OMB/DI/186
Free Admission Scheme for Leisure Facilities from July to September 2008
(Investigation declared on 11 December 2008 and completed on 24 March 2009)

The Scheme



The Scheme was announced by the Chief Executive in his 2007-08 Policy Address to highlight the 2008 Beijing Olympic Games as a main theme in promoting national education and encouraging community sports. It had over 3 million sessions available for free use at 150 venues and attracted some 12.8 million attendances. These included over 7.62 million to swimming pools and 5 million to land-based facilities. Almost all facilities registered increase in usage compared to the same period in 2007.

2. However, wastage was serious in some cases. Land-based facilities had an absence rate of original hirers of 38%. The no-show rate of crafts at water sports centres reached 54%. Our spot check of certain land-based facilities of a sports centre revealed even 74% and 78% no-show rate on some days.

Observations and Opinions

Planning and Execution

3. **Publicity.** As LCSD did not anticipate the need for changes, its publicity plan could not reflect its interim measures to address the public criticism after commencement and to promote the less popular facilities.

4. **Monitoring.** LCSD's initial plan to collate statistics monthly was an under-estimation of the scale of wastage due to no-show and low alertness to the need for close monitoring of demand. It promptly changed to daily monitoring since 1 July 2008.

5. **Cancellation of Bookings.** LCSD introduced a cancellation form from 18 July 2008. However, the cancellation arrangements were fraught with deficiencies and not user-friendly, resulting in low cancellation incidence: 420 cancellations, or 0.05%, *versus* about 800,000 no-shows.

6. **Training Sessions.** For facilities such as fitness rooms, sport climbing walls and crafts at water sports centres, booking rates were low as proof of proficiency was required. Corresponding training, with proper promotion, might have helped to boost interest and usage in these activities.

7. **Public Suggestions for Improvement**. On suggestions from the public for improving the arrangements, LCSD considered them not realistic, or worthwhile, to be introduced mid-way during the Scheme. However, they were well worth studying for similar initiatives in the future.

Revised Scheme

8. To encourage the public to exercise and to maximise use of under-utilised facilities, we see a case for a scheme on a smaller scale and on a regular basis, not *ad hoc*. A good example is the free access to LCSD museums every Wednesday. In exploring other options, LCSD should have measures to guard against abuse and wastage.

Recommendations

9. The lessons learned from the Scheme should be valuable reference for the planning and execution of similar initiatives. The Ombudsman made nine recommendations to LCSD, covering publicity planning and execution, monitoring of implementation, user-friendly arrangements for cancellation and safeguards against abuse.

10. LCSD has accepted all the recommendations.

Social Welfare Department ("SWD")

Case No. OMB/DI/175
Prevention of Abuse of Special Grants under the Comprehensive Social Security Assistance ("CSSA") Scheme
(Investigation declared on 14 February 2008 and completed on 18 December 2008)

Background

The CSSA Scheme is meant to be a safety net for people in genuine hardship. On top of standard rates to cover basic needs, special grants are issued for specific needs.

2. Standard special grants cover five categories of expenses: housing and related grants, family grants, medical and rehabilitation grants, child care grants and school grants. Discretionary special grants enable recipients to avoid such exceptional hardship as homelessness, family breakdown and lives at risk.

3. Cases examined by this Office indicated SWD's haphazard processing of applications for special grants, which would unfairly drain resources meant to help those in genuine hardship.

Observations and Comments

4. **Cases of meeting genuine need.** We used two cases to illustrate how the Scheme can function well as a safety net and where the applicants would have been in extreme hardship without CSSA.

5. **Cases of ineffective reviews.** We highlighted three cases where rent allowance had been obtained by deception using forged rental receipts. These cases had gone on for years despite biannual reviews. Yet another case of deception involved 45 forged receipts for adult diapers within four years, during which SWD had failed to discover the fraud despite 17 reviews.

6. **Case of approving applications without due care or reason.** In this blatant case of abuse, SWD had issued grants to the applicant for replacing eye-glasses six times within three years on grounds of progression of short-sightedness by only 0.25 degree or damage of glasses by accident or in a fight. While a pair of glasses cost only $530 on average, the applicant was granted $1,000 each time, the maximum amount for approval by SWD frontline officers. The applicant had also been granted cash advance for dental treatment four times without attending any such treatment; and defaulted on rent payment for public housing for ten months while receiving a rent allowance. In effect, SWD had been offering him ready cash or interest-free loans totalling $21,050, on top of the standard rate and other special grants.

7. **Case of rejecting unreasonable claim.** In this case, SWD refused a discretionary special grant to cover loss of cash, because the applicant still had $1,800 in his bank account. He then disposed of the money and applied again for the grant. SWD, quite rightly, still rejected his application.

8. **Cases of giving away easily.** We noted a case where the applicant claimed to have been robbed of $7,600 and another case claiming to have lost money three times, totalling $5,200. SWD gave in readily to the applicants' refusal of assistance in kind and approved discretionary special grants without even questioning why they had carried so much cash in the first instance.

Conclusion

9. Some of the above cases reflected an abandonment of common sense and lack of practical judgment among some in SWD. Meanwhile, the community expects the publicly funded CSSA Scheme to take care of the needy and the vulnerable and to guard against abuse. In approving special grants and conducting checks, SWD staff should, therefore, exercise greater care and better judgment.

Recommendations

10. The Ombudsman made 11 recommendations for more effective administration of special grants, including:

(a) involving senior officers more in dubious or complicated cases;

(b) verifying supporting documents more carefully;

(c) capping the quantity and price of eye-glasses; and

(d) settling costs by direct payment more readily in doubtful cases.

11. SWD accepted these recommendations.

Direct Investigation Assessments

Food and Environmental Hygiene Department ("FEHD")

Case No. OMB/DI/173
Enforcement against Unauthorised Extension of Business Areas by Licensed Restaurants
(Assessment commenced on 17 April 2007 and completed on 8 September 2008)

Unauthorised extension of business areas by restaurants, causing obstruction, poor hygiene and other nuisance, has been a consistent theme of complaints received by FEHD. Such complaints surged by 44% in 2006/07 against the 26% increase in 2005/06.

Major Statutory Provisions

2. FEHD may invoke against unauthorised extension of business areas by licensed restaurants under three major statutory provisions:

Provision	Offence	Applicable to
Provision 1 – Food Business Regulation, Cap. 132X, Section 34C	Carrying on food business at any place beyond the confines of the food premises	Restaurant licensee
Provision 2 – Food Business Regulation, Cap. 132X, Section 31(1)(b)	Carrying on unlicensed restaurant business	Any person
Provision 3 – Summary Offences Ordinance, Cap. 228, Section 4A	Obstruction of public places	Any person

3. Only provision 1 may result in suspension or cancellation of licence and has a strong deterrent effect. However, it can be enforced only against the restaurant licensee. In the absence of sufficient evidence implicating the licensee, provisions 2 and 3 will be invoked. Of the prosecutions instituted during the three years up to 2006/07, less than 18% invoked provision 1.

4. To strengthen the deterrent effect, FEHD plans to introduce legislative amendment to render not just the licensee of a restaurant but also its directors, managers and employees liable under provision 1.

Suggestions

5. In this light, The Ombudsman has decided not to go for a full-fledged direct investigation but to continue to monitor developments. Nevertheless, FEHD should step up enforcement within the existing legislative framework by reviewing its prosecution policy for more rigorous action; improving the internal cooperation between different

streams of officers with enforcement responsibilities; and enhancing its computer database to generate analytical prosecution statistics more readily.

6. FEHD has accepted all our suggestions.

Office of the Telecommunications Authority ("OFTA")

Case No. OMB/DI/181
Procedures for Reporting Breach of the Unsolicited Electronic Messages Ordinance
(Assessment commenced on 25 March 2008 and completed on 7 July 2008)

Background – the Report Form



Under the Unsolicited Electronic Messages Ordinance ("UEMO"), recipients of unsolicited commercial electronic messages ("CEMs"), commonly dubbed "junk messages", can choose to unsubscribe. If they continue to receive such CEMs, they may complain to OFTA by completing a report form.

2. This Office noted that a complainant had to complete a separate form for each and every junk message. This meant repeating personal data and consent for disclosure where multiple messages were reported. The form also asked complainants for more details than were essential, e.g. a detailed description as well as the full text of the junk message.

3. Moreover, although OFTA's reporting procedures included alternatives, e.g. by telephone or in person, to cater for persons who have difficulty in writing, OFTA had not publicised those options.

4. Concerned that the public might be deterred from reporting junk messages, The Ombudsman initiated an inquiry.

OFTA Review and Revision

5. In response, OFTA instantly reviewed and revised the report form so that a complainant can use the same form for reporting multiple CEMs. Furthermore, complainants of non-fax CEMs have to provide only a brief description of the CEM, while complainants of fax CEMs need not describe the CEM at all.

6. OFTA now also publicises its procedures for receiving non-written reports and accepts letter as an alternative to the report form.

Our Comments

7. We appreciate the need for obtaining detailed information for processing cases of contravention of UEMO. However, this has to

be balanced against ease and convenience for the reporting public. Otherwise, the process becomes a chore and may deter reporting.

8. In this connection, The Ombudsman commends OFTA's prompt improvement in response to our inquiry and sees no need for a full-fledged direct investigation.

Privacy Commissioner for Personal Data ("PCPD")

Case No. OMB/DI/179
Arrangements for Notifying Complainants of Refusal to Investigate
(Assessment commenced on 14 January 2008 and completed on 31 March 2009)

Background

Section 39(3) of the Personal Data (Privacy) Ordinance, Cap. 486 provides that where PCPD refuses to carry out or continue the investigation of a complaint, he should notify the complainant in writing not later than 45 days after receipt of the complaint. Concerned that PCPD had failed to meet the 45-day rule in many cases, The Ombudsman initiated a direct investigation assessment on the subject.

Consequences of Non-compliance

2. Despite mechanisms for monitoring progress, PCPD failed to comply with the 45-day rule in about 37% of cases between 2001 and 2007. This was due largely to PCPD's staff constraint and the inability of many complainants to provide all relevant information early. Though such non-compliance would not nullify PCPD's decision on a complaint case or deprive the right of the relevant parties to apply for a judicial review or to appeal to the Administrative Appeals Board, it constituted a delay in service delivery to the public.

Remedial Measures

3. PCPD had long been aware of this problem. As early as July 1998, PCPD had drawn up a legislative proposal to extend the 45-day timeline to accommodate late provision of information by complainants, but no time slot could be found for tabling it before the Legislative Council. In 2006, PCPD proposed to the Constitutional and Mainland Affairs Bureau ("CMAB"), the policy bureau concerned, that he be given power to discontinue an ongoing investigation at any time if he had reasonable cause for so doing. PCPD considered there to be an anomaly under the existing section 39(3): once an investigation had started and the 45-day period had expired, he had to go on regardless of any change of circumstances which might render the investigation unnecessary.

Observations and Conclusion

4. Although the legal consequences may be limited, the delay in notifying complainants beyond a specified statutory timeline is unsatisfactory. It gives the impression of PCPD disregarding legal requirements and being inefficient in administration as well as inconsiderate in service delivery.

5. The situation should be redressed. PCPD was taking steps in the right direction. We urged CMAB to expedite the legal amendments proposed by PCPD. Until section 39(3) is amended, PCPD should step up efforts in monitoring progress of cases and strive to comply with the 45-day rule.

Transport Department ("TD")

Case No. OMB/DI/193
Arrangements for Driving Test Routes
(Assessment commenced on 10 December 2008 and completed on 17 February 2009)

Background

In response to allegations that TD favoured candidates from a driving school by assigning them an easier test route, The Ombudsman decided to inquire into the operation of the system for road test.

Observations

2. Driving Test Examiners are authorised to choose one out of two to four pre-designated test routes of each driving test centre. TD has no guidelines on this.

3. In 2007, one of the test centres for the candidates in question offered three routes for road test. According to statistics specially compiled, the utilisation rates of the three routes in 2007 were 84.4%, 15% and 0.6%, with the pass rates 66.6%, 44.2% and 52.5% respectively. In comparison, the pass rate of other candidates for the whole of Hong Kong in 2007 was around 70%.

4. TD plans to computerise records on the utilisation rates of test routes and candidates' pass rates by the end of 2009 to monitor and review the test routes more effectively.

Comments and Conclusion

5. There is no evidence of TD offering the candidates in question an easier test route as the overall pass rate of other candidates was comparable to theirs. However, the fact that one route of the test centre

studied has been favoured by most Examiners is clearly contrary to TD's intention in providing multiple test routes.

6. The Ombudsman urges TD to computerise statistical records of test routes soonest possible and regularly analyse the data. The Department should then decide whether guidelines should be drawn up for Examiners to select test routes more evenly. Meanwhile, TD should manually keep data on each driving test route for the purpose.

7. As TD has accepted the suggestion, The Ombudsman considers a full-fledged direct investigation unnecessary.

Annex 12

Summaries of Selected Cases Concluded by Preliminary inquiries

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

Cases Concluded under Rendering Assistance/Clarification

Correctional Services Department ("CSD")

Case No. OMB 2008/3902

Treatment of inmates – stopping an inmate from taking food

The Complaint

The complainant, a prison inmate, fell ill and was taken to a public hospital. Allegedly, noting that he was weak, the doctor instructed the nurse to give him some food, but a CSD officer stopped him from taking it.

Inmates Not Allowed to Eat Freely

2. The CSD officers who escorted the complainant to the hospital maintained that the doctor had not advised that the complainant needed food. The complainant had actually asked for dinner at the hospital and they explained to him at once that inmates were not allowed to take unauthorised food. Furthermore, the prison had already reserved dinner for him.

Our Findings



3. The hospital staff recalled having handed some bread and milk to a hungry prison inmate on that day.

4. We noted that inmates normally have dinner at the prison at 4:30 pm. According to the records, the complainant was taken to the hospital at 4 pm and stayed there until 7:47 pm. His hunger was, therefore, understandable. While we appreciated the need for restrictions on inmates' consumption of food, we considered that the CSD officers should have exercised discretion in these special circumstances, e.g. when the doctor recommended food for the inmate or when the inmate had not eaten for quite some time. We urged CSD to review its practice.

A case of lack of compassion and flexibility

Annex 12

Summaries of Selected Cases Concluded by Preliminary inquiries

Electrical and Mechanical Services Department ("E&MSD")

Case No. OMB 2008/1043

Electrical installations – failing to order rectification of defective installations in a rented flat

The Complaint

The complainant lodged a complaint with E&MSD alleging that the electrical installations in his rented unit did not comply with safety requirements. Following a site inspection, E&MSD staff issued notification to the owner to demand rectification. However, the owner did not comply.

2. The complainant alleged dereliction of duty on the part of E&MSD as it had failed to order the owner to rectify the defects so that the problem remained unresolved.

Dubious Allegations

3. The complainant said that before reporting the faulty installations to E&MSD headquarters, he had forwarded the Department's notification letter to the owner by registered mail. However, we learned from the Post Office ("PO") that actually he had posted the letter later than the date he claimed.

4. When we sought clarification from the complainant, he explained that the date provided by PO was that of the "second" letter he posted. Before that, he had already sent a letter to the owner by registered mail but he had lost the receipt for it.

5. We asked for further details of his posting the letter the "first time" (e.g. when and where he had posted it) and reasons for not providing us with the information initially. He responded that he had forgotten "such trivial matters".

6. Meanwhile, the complainant was able to remember clearly such details as the date of the site inspection and his enquiry calls to the Department. He had even retained the receipt for his "second" letter. Yet, he had forgotten the details of his "first" letter and did not keep the receipt for that. We, therefore, doubted the credibility of his statements.

Rent Dispute

7. The owner claimed to have a rent dispute with the complainant. He discovered that the complainant had made unauthorised alterations to the original electrical installations and caused short-circuit in the electric system. He had demanded entry to the complainant's suite for rectification works but was refused. He decided, therefore, to wait till the tenancy expired and the complainant moved out. The owner denied having received E&MSD's notification letter from the complainant.

No Maladministration

8. This Office was of the view that the E&MSD notification was meant for both the owner and the tenant. As a tenant, the complainant was, therefore, also responsible for prompt rectification. Upon receipt of the complaint, E&MSD had conducted several site inspections and successfully demanded the owner to rectify the defects.

9. The Ombudsman found no maladministration on the part of E&MSD, while the information from the complainant was incomplete and dubious.

A case of incomplete and dubious information from the complainant

Environmental Protection Department ("EPD")

Case No. OMB 2008/1263

Contract management – (a) awarding a contract without checking whether the contractor's operation would involve unauthorised land use; and (b) failing to ensure that the contractor had taken out insurance for liability

The Complaint

EPD had awarded a contract to a company for recycling waste tyres. A fire broke out in the workshop and damaged the complainant's property nearby. A complaint was, therefore, lodged against EPD for poor contract supervision.

Unauthorised Land Use

2. The Short Term Waiver for the site did not permit its use for a waste tyres recycling workshop. Although aware of this, EPD did not ask the contractor to relocate the workshop until months after the fire. We found this most improper.

Delay in Taking Out Insurance

3. EPD explained that as the contractor could only start such preparatory work as workshop construction and equipment installation after the tender was awarded, it was not feasible to require the contractor to take out insurance in advance.

4. However, we considered that EPD should not have allowed the contractor to commence operation before securing insurance coverage, particularly as waste tyres recycling was subject to fire risk.

Our Suggestion

5. We suggested that EPD review its procedures for contract management and develop an appropriate monitoring mechanism and guidelines for staff.

A case of poor contract management

Food and Environmental Hygiene Department ("FEHD")

Case No. OMB 2008/1175

Garbage collection – failing to regulate effectively noise nuisance and odour from refuse collection vehicles in the early hours

The Complaint

The complainant alleged that at around 4 am every morning, a refuse collection vehicle would come to collect garbage in front of the building where he lived, causing noise nuisance and odour. He had repeatedly complained to FEHD, but the problem remained unresolved due to ineffective regulation by the Department.

Referral by FEHD

2. Site visits by FEHD staff confirmed that a private refuse collection vehicle did come in the early morning hours to collect garbage. As the street remained clean and tidy, there was no contravention of the Public Cleansing and Prevention of Nuisances Regulation. The problem, therefore, was not within the purview of FEHD. Nonetheless, the Department referred the case to the Police and the Environmental Protection Department ("EPD") for action.

Response from EPD

3. Noise nuisance in residential buildings and public places, including that caused by refuse collection vehicles collecting garbage on the roadside, is for the Police to handle. As for smell, some unpleasant smell would inevitably be generated in the course of garbage collection. However, where the complainant consented, EPD staff could conduct an odour prediction assessment at his flat to ascertain whether the unpleasant smell during garbage collection constituted a nuisance.

4. In this case, the complainant declined EPD assistance. However, the Department still investigated the case upon FEHD referral. Records showed that no similar complaint had been received in the past few years. As the complainant refused to disclose his personal information and did not contact the Department, EPD could not conduct any odour

prediction assessment at his flat. Still, it asked the cleansing contractor to consider another location for garbage collection to reduce the nuisance. The contractor complied.

Site Visit by Our Staff

5. Our staff conducted a site visit to the neighbourhood in question in the early hours. Garbage was found to be properly packed in black plastic bags by the roadside and there was no unpleasant odour. Later, on arrival of a refuse collection vehicle, workers threw the garbage bags into the loading compartment and the vehicle left at once. The whole process took less than four minutes. Although the compactor of the vehicle did make some noise and emit an odour when compressing the garbage, the problem was not serious.

Our Comments



6. FEHD had followed up the case with due diligence. It had informed the complainant of the progress in time and referred the case to EPD and the Police. EPD had also actively looked into the matter but the complainant declined any direct assistance.

7. FEHD and EPD can only make suggestions for improvement to private cleansing contractors such as when and where to collect garbage. Implementation is not mandatory. We considered the refuse collection process quick and efficient. To ask for an absolutely silent and odour-free collection process was impossible and impractical.

8. In fact, a better solution would be for the Owners' Corporation of the complainant's building to discuss with the neighbouring buildings. They may consider asking the cleansing contractor to take, at some appropriate time, the garbage farther away to an FEHD refuse collection point for collection.

Hospital Authority ("HA")

Case No. OMB 2008/1270
Medical records – failing to provide complete duplicate medical records of a newborn baby

The Complaint

The complainants' son was born in an HA hospital in October 2007. The complainants then applied to the hospital for the baby's duplicate medical records. However, the documents issued by the hospital did not include his hand or foot prints taken at birth.

2. The hospital staff ("Staff A") explained to the complainants that the information in question was kept in the mother's (not the baby's) file and so it had not been provided. Staff A advised the complainants to make a new application. The complainants maintained that they had clearly requested in the application form for their baby's complete duplicate records and that surely such records should include the baby's hand and foot prints. They, therefore, complained against HA for failing to provide them with the records applied for.

Background



3. It was common practice for the hospital to take the foot prints of all newborn babies and keep them in their mothers' files for identification purpose in case of babies getting mixed up. As the foot prints were meant for identification only, the hospital did not regard them as "medical records" and were therefore not kept in the babies' files.

4. In the past, public hospitals generally did not open separate files for newborn babies. The babies' condition was kept in their mothers' files. However, starting from 1 April 2003, public hospitals would open separate files for newborn babies.

Misunderstanding by Staff

5. The hospital explained that Staff A had misunderstood that since the baby's foot prints were kept in the mother's file, they belonged to the mother's data and there was no need to release them. The complainants had, therefore, been advised to make a separate application. Staff A had been unaware that public hospitals had changed their policy to open separate files for newborn babies. She had also failed to seek her supervisor's advice and thus gave the complainants wrong information and inappropriate advice.

6. Upon receipt of our referral of the complaint, the hospital released the foot print records and apologised to the complainants. It also instructed Staff A to seek her supervisor's advice when in doubt so as to avoid similar incidents in future.

A case of misunderstanding of policy by staff

Legal Aid Department ("LAD")

Case No. OMB 2008/0185

Legal advice – giving wrong advice so that the complainant mistakenly filed his application for compensation in the High Court and incurred financial loss

The Complaint

The complainant claimed that he had been dismissed by his employer after sustaining injury at work. In July 2007, he applied to LAD for legal aid to sue the employer for discrimination and for compensation. Allegedly, an LAD staff member had advised him at a meeting that the deadline for filing his lawsuit, to be instituted in the High Court, was 31 October and had drafted a "Statement of Claim" for him. However, the claim was struck out for being taken to the wrong Court and the complainant was asked to pay legal cost. The complainant considered his financial loss a result of the wrong advice by LAD staff.

Comments from LAD

2. In a meeting with LAD law clerk Ms A on 31 October, the complainant indicated that he would file his claim with or without legal aid, Ms A advised him to enquire at the Resource Centre for Unrepresented Litigants of the High Court. That same day, the complainant submitted his litigation documents to the High Court and sent copies to LAD. His application for legal aid was later rejected.

3. According to the Department's policy and guidelines, LAD law clerks would not give legal advice to applicants. Ms A denied having advised the complainant on the time-bar or telling him to take his case to the High Court. With regard to the draft "Statement of Claim", Ms A clarified that she had only prepared a draft statement for the complainant to set out the details of his claim to LAD. The allegation that Ms A had advised the complainant that since he was dismissed on 31 October 2005, the deadline for filing his claim should be 31 October 2007 was obviously contradictory to the litigation documents prepared by him, citing 1 November 2005 as the date of his dismissal.



4. In fact, a letter issued by the Equal Opportunities Commission to the complainant noted that he had to file his claim within 24 months after dismissal. Otherwise, the District Court would not take up the case. The complainant should have realised from this that his case was to be heard in the District Court.

Our Observations and Comments

5. We have examined the draft "Statement of Claim" prepared by Ms A, the "Statement of Claim" submitted by the complainant to Court and relevant documents submitted by the complainant to LAD. We found the evidence to corroborate LAD's version of events.

6. In the circumstances, we considered that there was no substantive evidence to support the complainant's allegations.

SUMMARIES OF SELECTED CASES CONCLUDED BY PRELIMINARY INQUIRIES

Leisure and Cultural Services Department ("LCSD")

Case No. OMB 2007/5335

Sports centre facilities – inefficient management of sports venue and unreasonable charges

The Complaint



The complainant alleged that it was always difficult to book a wall for climbing in a particular LCSD sports centre since such sport became available in September 2006. Moreover, the rental was higher than that for similar walls in other districts. He considered that priority should be given to people who wanted to use those walls as there were only a few of them managed by LCSD. Also, there should be a flat rate for their rental.

Response from LCSD

2. LCSD explained that the main arena of the sports centre was designed for multi-purpose and the climbing walls were adjacent to two badminton courts. When these badminton courts were on hire, the walls would be closed to allow adequate space for users of the courts and *vice versa*.

3. This design of the main arena was meant to facilitate better and more flexible utilisation of the venue to cater for the needs of different sports. The Department adopted a "first-come-first-served" policy in accepting bookings of facilities. However, the complainant suggested that notwithstanding such a policy, badminton players were in the majority and the climbing walls were usually closed.

4. Upon receiving this complaint, LCSD adopted a new measure. It renumbered the badminton courts so that the courts farthest from the climbing walls would be rented out first, to give the public a better chance to book the walls. However, in fairness and for better use of venue, LCSD considered it inappropriate to set aside any specific time slot for priority bookings by climbing wall users.

5. The rental for climbing walls were based on their size. Those with an area of 100 square metres or more would be charged at a higher rate. LCSD had no plan to establish a fixed rental for such facilities.

Our Comments and Recommendations

6. LCSD had promptly replied to the complainant and reviewed the booking procedures to give climbing fans a better chance to use the climbing walls.

7. Nonetheless, this Office noticed that despite LCSD's new measures to rent out the badminton courts farthest from the climbing walls first, its staff could only encourage the public to cooperate. If hirers insisted on renting the courts adjacent to the climbing walls, the staff would comply.

8. We, therefore, suggested that LCSD should further study and review to establish more stringent procedures, requiring the public to book the badminton courts farthest from the climbing walls first. Moreover, as the climbing walls and the adjacent badminton courts would not be used at the same time, it should be impossible for simultaneous users of either facility to cause any injury to the other party. Requiring the public to pay more for a so-called "buffer area" was unnecessary and thus unfair. LCSD should exclude the "buffer area" in the calculation of the rental for the climbing walls.

LCSD's Follow-up Measures

9. LCSD eventually accepted our suggestion to exclude the "buffer area" in the calculation and adjusted the rental accordingly. The Department was also considering our suggestion on further improving the chances of the public for renting the climbing walls.

A case of faulty procedures

Water Supplies Department ("WSD")

Case No. OMB 2008/1489

Water charges – failing to follow up properly a report of sudden increase in water charges

The Complaint



The latest water charges for the flat of the complainant's mother suddenly rose from about $100 to over $500. On behalf of her elderly mother, the complainant called the Customer Telephone Enquiry Centre ("the Centre") of WSD to enquire. She pointed out clearly to the WSD staff that the recorded water consumption had soared after the Department's replacement of the water meter. She, therefore, suspected that it might have something to do with the new meter. A few days later, she called the Centre again, stating that her own investigations had revealed that the meter had probably been wrongly swapped with their neighbour's. WSD staff subsequently paid a site visit but thereafter they neither contacted her or her mother nor rectified the wrongly connected meters.

Response from WSD

2. When the complainant called the Centre to raise formal dispute on the water charges, WSD staff had noted down the matter and advised that she did not have to pay the charges for the time being. A site visit was then conducted together with the complainant. The meters were confirmed to have been inadvertently swapped and could be rectified simply by amending the serial numbers of the meters in its computer system.

3. Accordingly, WSD amended the data in its computer system, issued a letter to the complainant's mother on the findings, the follow-up action and the adjusted water charges. The Department believed that the complainant might not understand the operation concerned and therefore had wrongly assumed that the meters had to be physically rectified. She, therefore, misunderstood that WSD had not handled her case.

Complaint Not Properly Recorded

4. Our inquiries revealed that the complainant had called the Centre three times on the same day. Although her calls were answered by three different staff members, all of them had repeated the same advice to her: namely, to confirm the meter reading in the water bill as correct and then conduct a simple test on her own for water pipe leakage. If the reasons for the excessive water charges could still not be ascertained, the registered consumer, i.e. her mother, should request the Department in writing to conduct an investigation.

5. In fact, the complainant had clearly explained in her second call that it was impossible for her mother to make a written request because of her age and that the officer receiving the call (Officer A) had already suggested to her (the complainant) that she could raise a formal dispute jointly with her mother by calling the Department. However, in her third call on the same day, another officer (Officer B) again asked them to make a written application. It showed that the Centre had not properly recorded the main points of each conversation between the complainant and its staff for future reference. Since every call of the complainant was treated as a new enquiry, each time she was given much the same answers, wasting time for both parties.

Failure to Explain the Case

6. Meanwhile, the reply issued to the complainant by the WSD Customer Accounts Section only explained the wrong arrangement of the meters and mentioned the adjustment of water charges for the complainant's mother. It did not address her concern as to when the meters would be restored to their rightful position.

7. This Office considered that WSD should have clarified in its reply that the billing problem would be resolved without any need to rectify the meters physically. Had the Department done so, the complainant and her mother would not have been troubled for so long by this incident.

8. In this connection, this Office urged WSD to conduct a review and make improvement.

A case of inconsiderate procedures

Annex 13

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Conclusion
Agriculture, Fisheries & Conservation Department		
2007/6013	Unreasonably euthanising the complainant's lost dog before she could reclaim it	Partially substantiated*
Buildings Department		
2007/3441	Unreasonably issuing demolition order and Warning Notice to the complainant	Partially Substantiated*
2008/0155(I)	Delay in replying and unreasonably refusing to provide the complainant with a copy of the investigation report on water seepage	Substantiated*
2008/0419(I)	Refusing to provide the complainant with the photographs taken in his building and copies of the relevant correspondence	Substantiated*
2008/1747(I)	Unreasonable refusal to provide the complainant with a copy of the investigation report on water seepage	Substantiated*
Environmental Protection Department		
2008/0074	(a) Unreasonably refusing an application for exemption from the smoke emission test for a retired Government vehicle; and (b) Failing to inform the complainant of his right of appeal against the Department's decision	Partially substantiated*
2008/0234	Failing to take enforcement action against illegal breeding of pigeons on the rooftop of a building	Substantiated*
Fire Services Department		
2008/0200	Rashly removing the newly installed bollards on a pavement and disregarding the safety of pedestrians	Unsubstantiated
2008/0420(I)	Refusing to provide the complainant with the photographs taken in his building and copies of the relevant correspondence	Partially substantiated*
Food and Environmental Hygiene Department		
2007/4541	Shirking responsibility to take enforcement action against illegal parking of bicycles at a public transport interchange	Unsubstantiated
2008/0156(I)	Delay in replying and unreasonably refusing to provide the complainant with a copy of the investigation report on water seepage	Substantiated*
2008/1748(I)	Unreasonable refusal to provide the complainant with a copy of the investigation report on water seepage	Substantiated*

(Cases with * have recommendation(s) in the investigation reports.)

ANNEX 13

INDEX OF CASES CONCLUDED BY FULL INVESTIGATION

Case No.	Complaint	Conclusion
Government Logistics Department		
2008/0285	Failing to inform bidders that a retired Government vehicle sold at a Government auction would be required to pass the smoke emission test	Unsubstantiated
Government Property Agency		
2008/1068	Shirking responsibility to take enforcement action against illegal parking of bicycles at a public transport interchange	Unsubstantiated
Government Secretariat – Chief Secretary for Administration's Office		
2008/0067	Failing to handle properly the complainant's enquiries on her lost dog	Substantiated*
Highways Department		
2008/0225	Rashly removing the newly installed bollards on a pavement and disregarding the safety of pedestrians	Unsubstantiated
Home Affairs Department		
2007/5352	Shirking responsibility to take enforcement action against illegal parking of bicycles at a public transport interchange	Unsubstantiated
2007/5860	Failing to take proper action against illegal widening of a footpath which was misused as vehicle access	Unsubstantiated*
2008/0972	Unreasonably requiring the complainant to pay additional hire charge	Substantiated*
Hong Kong Examinations and Assessment Authority		
2008/2001 and others	Changing the marking scheme for a paper in a public examination	Substantiated other than alleged
Hong Kong Housing Authority		
2007/4668	Refusing to repair the defects on the buildings of a Tenants Purchase Scheme estate	Substantiated other than alleged
Hong Kong Housing Society		
2008/1681	Erecting unauthorised structures in a housing estate and failing to demolish them as soon as possible	Substantiated
Hospital Authority		
2007/5624	Unreasonably asking the complainant for payment of her new-born baby's hospitalisation charges 13 years ago	Substantiated*
2008/0005	Failing to provide proper non-emergency ambulance transfer service	Substantiated*

(Cases with * have recommendation(s) in the investigation reports.)

Case No.	Complaint	Conclusion
Housing Department		
2007/0310	Unreasonably refusing to refund to the complainants the rent deposit paid by their late son	Partially substantiated *
2007/4217	Unreasonably requiring the complainant to transfer to another flat soon after she moved into her flat	Unsubstantiated*
2007/4263	Failing to properly handle a complaint about noise nuisance	Unsubstantiated
2007/4440	(a) Delay in handling a ceiling seepage complaint; and (b) Refusing to accede to the complainant's demand for compensation	Unsubstantiated
2007/4667	Refusing to repair the defects on the buildings of a Tenants Purchase Scheme estate	Substantiated other than alleged
2007/4889	Refusing to compensate the complainant for the property damage caused by a burst of salt water pipes in the upper floor unit	Unsubstantiated
2007/4948	Failing to refund the rates for the relevant period to the complainant in accordance with Government's decision on rates concession	Substantiated other than alleged*
2007/4958 2007/4959 2007/4960 2007/4961 2007/4962 and others	Unreasonably requiring complainants who are owners of HOS flats to take up management of a footbridge open to the public.	Partially substantiated
2007/5691	Unreasonably requiring the complainant to remove a gas pipe in her flat when she moved out	Unsubstantiated
2008/1460	Unreasonably refusing the complainant's request to delete from his tenancy the name of his ex-wife who had moved out many years ago	Unsubstantiated
2008/2251	Unreasonably rejecting the complainant's application for adding his son to his tenancy	Partially substantiated
2008/2677	Failing to monitor the licensed operator of a market, thus resulting in confusion in rates assessment	Substantiated other than alleged*
Immigration Department		
2008/2476	Delay in handling a case of suspected illegal deployment reported by a foreign domestic helper	Unsubstantiated
2008/3397	Wrongly issuing the same identity card numbers to two persons	Substantiated*
Intellectual Property Department		
2008/3417	Unreasonably rejecting an application for registration of trademarks	Substantiated*

(Cases with * have recommendation(s) in the investigation reports.)

Annex 13

Index of Cases Concluded by Full Investigation

Case No.	Complaint	Conclusion
Labour Department		
2007/5889	Mishandling a labour dispute claim against the complainant	Unsubstantiated*
Lands Department		
2007/2180	(a) Failing to properly follow up a complaint about flooding problem; and (b) Failing to inform the complainant of the progress of her case	Substantiated*
2007/2501	Failing to take lease enforcement action against a private estate	Substantiated*
2007/2632	Failing to take proper action against illegal widening of a footpath which was misused as vehicle access	Substantiated*
2007/4542	Shirking responsibility to take enforcement action against illegal parking of bicycles at a public transport interchange	Unsubstantiated
Leisure and Cultural Services Department		
2006/4311	Failing to resolve the problem of management and maintenance responsibility for a recreational park	Partially substantiated*
Office of the Telecommunications Authority		
2007/5700	Mishandling the complainant's request for assistance in resolving its internet network problem	Unsubstantiated
Planning Department		
2008/3034(I)	Unreasonably refusing to provide the minutes of a Town Planning Board meeting	Partially substantiated*
Rating and Valuation Department		
2008/2678	(a) Failing to check that the rates of many stalls in a market had not been assessed for several years despite an annual revaluation; and (b) Failing to carefully examine the rental schedules submitted by the licensed operator of the market	Substantiated
Social Welfare Department		
2006/4299	Mishandling a complaint about 16 cases of abuse of mentally handicapped service users by staff in a sheltered workshop operated by a non-government organisation	Substantiated other than alleged*
2007/2665	Unreasonably refusing retrospective payment of disability allowance to the complainant's deceased mother	Partially substantiated*

(Cases with * have recommendation(s) in the investigation reports.)

Case No.	Complaint	Conclusion
2007/5721(I)	(a) Failing to inform the complainant immediately that his daughter was admitted to a refuge for women; (b) Unreasonably asking for a written statement from the complainant that he would not contact the Department's headquarters and refusing to provide him with a copy of that statement; and (c) Unreasonably refusing the request by his lawyer for information about his daughter's case	Substantiated other than alleged*
2008/2385	(a) Improperly suspending the old age allowance of an aided person before his application for disability allowance was approved; and (b) Mistaking the aided person's hospital admission date to be his date of death and stopping his disability allowance from that date	Substantiated other than alleged*
Student Financial Assistance Agency		
2007/4795	Failing to reply to the complainant's email enquiries	Substantiated
Transport Department		
2007/4056	Shirking responsibility to take enforcement action against illegal parking of bicycles at a public transport interchange	Substantiated*
2007/4752	(a) Failing to resolve the long-standing problem of opening a boulevard in a private residential development to heavy vehicles, thereby affecting the safety of the local residents and causing traffic congestion; and (b) Being unfair to the local residents in requiring them to bear the maintenance responsibility of the boulevard	Unsubstantiated
2007/6091	Installing railing outside the complainant's vehicle repairs shop without prior notice, thus affecting its business	Substantiated other than alleged*
2008/0226	Rashly removing the newly installed bollards on a pavement and disregarding the safety of pedestrians	Substantiated*
Water Supplies Department		
2007/4684	Failing to give adequate notice to the public about the cancellation of an enquiry number	Substantiated*
2008/0266	Unreasonably destroying the complainant's file records	Substantiated other than alleged

(Cases with * have recommendation(s) in the investigation reports.)

Annex 14

Summaries of Selected Cases Concluded by Full Investigation

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

Hong Kong Examinations and Assessment Authority ("HKEAA")

Case No. OMB 2008/2001

Marking scheme – changing the marking scheme for a paper in a public examination – substantiated other than alleged

The Complaint

In April/May 2008, this Office received a complaint from nearly 100 students sitting for the 2008 Hong Kong Advanced Level Examination ("HKALE"). They criticised HKEAA for unreasonably and unfairly changing the marking scheme for a Use of English paper, to accommodate candidates who had not followed the instructions in the paper.

Setting of Examination Questions and Marking Schemes

2. HKALE questions are set by the HKEAA Moderation Committee, while marking schemes are devised by the Committee as guidelines for markers.

3. For each subject, HKEAA has a panel of markers. After each examination, the panel will scrutinise a sample of about 1% of examination scripts to analyse candidates' performance. The object is to establish a unified marking standard for the subject. Where necessary, the panel will revise the marking scheme.

The Paper in Question

4. In the paper in question, candidates were asked to listen to a recorded conversation about items which players in a game were allowed to bring to a deserted island and those items they were not allowed to have. Candidates were required to answer the question:

"What the players are allowed to have: Put ticks or crosses …."

Original Marking Scheme

5. According to HKEAA's intention and the original marking scheme, candidates were expected to put in the boxes a "✓" for items "allowed to have" and a "✗" for those "not allowed to have". Marks would be given for correct answers, while wrong answers would neither score nor lose marks.

Revised Marking Scheme

6. After the examination, the panel of markers first marked about 600 examination scripts in accordance with the established procedures. Candidates' answers came out as follows:

- most candidates had marked all the boxes with "✓" and "✗" (Category One candidates);



- a small number of candidates had put "✓" and "✗" in some boxes and left the rest blank (Category Two candidates);
- yet others had put "✓" in some boxes and left the rest blank (Category Three candidates).

The panel inferred the following "intended answers" from these three categories of candidates:

Category One candidates

"✓" indicated items that were "allowed to have";
"✗" indicated those "not allowed to have".

Category Two candidates

"✓" indicated items that were "allowed to have";
"✗" indicated those "not allowed to have";
boxes left blank meant unattempted question.

Category Three candidates

"✓" indicated items that were "allowed to have";
the blank boxes indicated those "not allowed to have".

Marked according to "Intended Answers"

7. After discussion, the markers decided to revise the marking scheme so that the scripts would be marked on the basis of the "intended answers" of each category of candidates.

8. HKEAA argued that marking schemes should be based on the assessment objectives and revised according to the "intended answers" of candidates. The Authority considered it an important "professional principle" to mark scripts in the light of candidates' "intended answers" when such "intended answers" were evident. This should not be regarded as unfair.

Our Observations and Comments

9. HKEAA originally intended that candidates should answer the question by using "✓" to indicate items that were allowed to have and "✗" to indicate those that were not allowed. However, the instructions literally conveyed a completely different message. The instructions specifically asked candidates to use **either** "✓" **or** "✗" to indicate "allowed to have".

10. Moreover, there was no guidance as to how to indicate items that were "not allowed to have". Thus, a blank box could be taken to mean either an item "not allowed to have" or an unanswered question.

11. The instructions had not only failed to reflect HKEAA's original intention, but also to provide clear guidelines for candidates. Consequently, with candidates using different approaches to answer

the question, HKEAA could only resort to using discretion based on a general understanding and customary usage of the signs "✓" and "✗" to infer candidates' "intended answers" and mark their scripts accordingly.

12. We understand that in marking scripts according to the "intended answers" instead of adhering to the instructions given, HKEAA's aim was not to make candidates lose marks. Regrettably, however, this had the undesirable outcome of the Authority encouraging candidates to disregard specific instructions in examination questions.

Conclusion

13. The complainants were actually accusing HKEAA of awarding marks to the Category Three candidates, whom the complainants thought had not followed the instructions in the paper. The complainants were wrong. It was the complainants themselves who had adhered to the convention of "✓" and "✗" representing "yes" and "no" and disregarded the specific instructions. These, strictly speaking, had been followed only by the Category Three candidates.

14. The complaint itself was, therefore, unsubstantiated. However, in this case, HKEAA had clearly failed in its duty to provide candidates with appropriate and accurate task instructions. As a result, candidates were confused. Hence, The Ombudsman considered the case substantiated other than alleged.

15. This case revealed that HKEAA's system, though fairly elaborate, had failed to prevent an obvious mistake in question setting. The Ombudsman saw this as a serious deficiency in the system and urged the Authority for review.

16. In this light, The Ombudsman also decided to initiate a follow-up direct investigation for a more in-depth examination into HKEAA's mechanism of setting questions, with a view to identifying further room for improvement.

A case of carelessness and inadequate checking

Hong Kong Housing Authority ("HKHA") and Housing Department ("HD")

Case Nos. OMB 2007/4667-4668

Responsibility for repairs – refusing to carry out repairs to a Tenants Purchase Scheme estate – substantiated other than alleged

The Complaint

The Owners' Corporation ("OC") of a Tenants Purchase Scheme ("TPS") estate lodged a complaint with this Office against HKHA, the developer, and its executive arm HD for refusing to carry out repairs to the estate.

2. HKHA had given the estate a seven-year Structural Safety Guarantee. Before the Guarantee expired, the OC reported to HD spalling of concrete and exposure of steel reinforcement at windows and planters on the external walls and asked for repairs. However, HD refused as the defects were outside the scope of the Guarantee.

3. As HD had carried out similar repairs to other TPS estates out of "goodwill", the OC considered HKHA and HD unfair.

Response from HD

4. HD pointed out that as the windows and planters were all non-structural, they were outside the scope of the Guarantee and the OC should be responsible for their maintenance. Despite HD's repeated explanation, the OC was adamant that HD should carry out the repairs.

5. Upon our commencement of inquiries, however, HD reconsidered the case. Finally, it decided to exercise discretion and conducted the repairs on a one-off basis.

Our Observations and Comments

6. The defects reported were indeed outside the scope of HKHA's guarantee. HD's initial refusal of repairs was, therefore, appropriate and the OC's complaint unsubstantiated.

7. However, HD eventually abused its discretionary power and "goodwill" by reversing its decision. It simply should not have carried out repairs to the estate, essentially a private property, with public funds. If public safety had been a concern, the Buildings Department, rather than HD, would have been the proper authority to take action, the cost of which to be borne by the OC.

8. In this light, The Ombudsman considered this case substantiated other than alleged.

Recommendation

9. HD accepted our recommendation to tighten its use of discretion to avoid misuse of public funds.

A case of abuse of discretionary power

Annex 14

Summaries of Selected Cases Concluded by Full Investigation

Hong Kong Housing Society ("HKHS")

Case No. OMB 2008/1681

Unauthorised structures – installing unauthorised signboards on an external wall of a housing estate and refusing to remove them – substantiated

The Complaint

The Owners' Corporation ("OC") of an HKHS housing estate alleged that HKHS had illegally installed advertising signboards on an external wall of the podium. Despite repeated demands from the OC since early 2006 for removal of the signboards, HKHS started to demolish them only at the end of the following year.

The Event

2. HKHS owned the wall in question. In 2000, it installed signboards on the wall for advertising by its commercial tenants.

3. In April 2006, the Buildings Department ("BD") advised the OC that all the signboards were unauthorised structures and should be removed. In December 2006, the OC's legal representative, therefore, wrote to HKHS to demand removal of the signboards. However, HKHS maintained that it had full rights to use the wall in question. Eventually, HKHS removed the signboards in November 2007, but just to prepare for the installation of more advertising signboards later.

Our Observations and Comments

4. As a statutory public body, HKHS should have set a good example by not installing or tolerating the installation of any unauthorised structures. We were extremely surprised that it had contravened the law and installed the signboards without BD's prior approval.

5. Despite BD's advice, HKHS showed no regret over installing the unauthorised signboards and had no intention whatsoever to rectify its mistake.

6. The Ombudsman, therefore, considered this complaint substantiated.

7. HKHS undertook to seek BD's approval in future before installing similar signboards.

A case of defiance of the law

Hospital Authority ("HA")

Case No. OMB 2008/0005
Patients transfer service – improper arrangements of Non-Emergency Ambulance Transfer Service keeping the patient waiting for long – substantiated

Significant Delays



The complainant's mother was a paraplegic living in a care home for elderly persons. She had to visit a public hospital from time to time for follow-up consultation. One day, the complainant requested HA's Non-Emergency Ambulance Transfer Service ("NEATS") to pick up her mother for her medical appointment and return to the elderly home afterwards. However, they were kept waiting for long because the transfer vehicles arrived at the pick-up point more than 1.5 hours late on both trips. The complainant alleged that there had been similar delays a dozen times before. NEATS arrangements were inefficient and service was poor.

Route Planning

2. The NEATS Control Centre, when arranging for transfer service, would consider such factors as the vehicles available and the requests for the service on a particular day. Patients along the same route would, where possible, be arranged to ride on the same vehicle and transferred in a batch. Nonetheless, as there is no telling what might happen *en route*, the vehicles might not arrive on time. Once returned to the hospital, a vehicle would stay for about 30 minutes to allow crew members to clean the compartment, replenish supplies and take a rest before setting off for another assignment.

Causes for Delay

3. Transfer vehicles are manned by two- or three-man teams. As the complainant's mother had to be carried up and down the stairs, a three-man team was necessary. HA explained that the vehicle in question had other appointments that morning. On return to the hospital, the team members had to clean the compartment and have lunch before setting out to pick up the complainant's mother. The return trip also experienced delay as the journey was long and the vehicle held up by traffic congestion. The Control Centre was unable to deploy another vehicle with a three-man team to relieve them. Consequently, the transfer vehicle arrived some 1.5 hours late.

Service-Oriented Principle Foregone?

4. Traffic conditions and other factors would, of course, affect the arrival of a transfer vehicle. Nevertheless, NEATS clients are mainly physically weak or impaired. To keep them waiting for long showed a lack of consideration for them and ran counter to the service-oriented principle.

5. Records indicated that before picking up the complainant's mother at noon that day, the team members of the transfer vehicle had spent more than 1.5 hours cleaning the compartment and taking their meals. When they set out again, it was past the appointed time. The situation was similar that afternoon. The team members were well aware that they could not make it on time, but they never alerted the complainant in advance. Nor did they try to be more flexible with their rest or meal time. Such arrangements were indeed unsatisfactory.

6. The Ombudsman considered this complaint substantiated.

Improvement Needed

7. We recommended that HA review and draw up proper NEATS guidelines, including alerting the patient when it becomes clear that a transfer vehicle would be late for more than 15 minutes. It should also assess the time needed for rest and replenishing supplies.

8. HA accepted our recommendations and developed new measures for greater flexibility in route scheduling. To improve the service, it was also studying the feasibility of using the global positioning system for better estimation of arrival time.

A case of lack of consideration for service users

Housing Department ("HD")

Case No. OMB 2007/0310
Public housing rent deposit – refusing to refund rent deposit – partially substantiated

The Complaint

The complainants were the parents of a public housing tenant found dead in his unit in October 2006. The complainants requested HD to postpone its recovery of the unit to allow more time for Police investigation. In November, the complainants surrendered the unit. In December, they wrote to HD for refund of the rent deposit that their son had paid.

2. The property management agent ("PMA") of the housing estate rejected their request as the deposit had already been used to offset the rent for the period of their retention of the unit. The complainants, therefore, complained to this Office.

HD Explanation

3. Normally, HD allows flexibility when dealing with recovery of a unit after the tenant has passed away. The Department accepts



late surrender of such housing units so that the tenant's family has time to remove the tenant's belongings. Legally, a tenancy does not automatically end with the death of the tenant.

4. In this case, the complainants insisted on keeping the unit until the Police could ascertain the cause of their son's death. The PMA accepted their request because the complainants were emotional. It had, nevertheless, "verbally" informed them that they would have to pay rent while keeping the unit.

5. Although the Police confirmed at the end of October that there was no need to keep the unit for investigation, the complainants asked HD in early November for a further extension of 15 to 30 days. Some two weeks later, the complainants handed over their keys without clearing out the unit. The PMA called the complainants several times to ascertain their intentions, but in vain. Finally, the PMA formally recovered the unit. With HD's agreement, the PMA used the deposit paid by the late tenant to offset the rent for November.

Our Observations and Comments

6. This Office agrees that the tenancy could not be terminated until the complainants had formally surrendered the unit. It was, therefore, not unreasonable of HD to use the deposit to offset the outstanding rent. However, since the complainants were not party to the tenancy agreement, HD or the PMA should have explained to them clearly that rent was payable for keeping the unit.

7. However, the PMA had only reminded the complainants "verbally" of this. The lack of a written agreement had then led to disputes. We consider such handling slipshod.

8. This complaint was, therefore, partially substantiated.

9. We understand that the complainants were in grief and it was not easy for HD to recover the unit. However, since the Police had made it clear that keeping the unit was no longer necessary, HD should have taken recovery action earlier, so that the unit could be allocated to a wait-listed applicant.

Recommendations

10. The Ombudsman recommended that HD:

(a) arrange appropriate training for staff and PMAs; and

(b) refine its guidelines for handling requests by families of deceased tenants to defer surrender of public housing units.

A case of poor handling and delay

Annex 14

Summaries of Selected Cases Concluded by Full Investigation

Housing Department ("HD")

Case No. OMB 2007/4948

Rates refund – failing to refund rates to the complainant in line with Government's rates concession – substantiated other than alleged

The Complaint



The complainant lived in a public rental housing ("PRH") unit. He received a monthly rent allowance under the Social Welfare Department ("SWD")'s Comprehensive Social Security Assistance ("CSSA") Scheme. Since his rent allowance could not cover the rent in full, he had to pay the difference of some $100 each month.

2. In 2007, Government decided to waive the rates for April to September for the whole territory. When the complainant moved out at the end of August 2007, he argued that as he had paid part of the rent, HD should refund him part of the rates for the PRH unit.

3. He complained to this Office against HD for refusing to make such a refund.

Rates Refund Arrangement

4. For a CSSA household whose rent allowance equalled the monthly rent of the PRH unit, HD would transfer the full amount of rates concession to SWD. Where the CSSA recipient had to pay part of the rent, he was, theoretically, entitled to a rates refund on a *pro rata* basis. In practice, however, HD would first refund the rates in full to the CSSA recipient and SWD would later deduct any excess from his CSSA.

The Complainant's Case

5. In this case, the complainant had in fact refused to move out of the PRH unit after his divorce in December 2005. Hence, he was no longer an authorised resident of the unit. HD had sent him a letter notifying him so and demanded payment of "mesne profits" for illegal occupation of the unit.

6. Not being an authorised resident of a PRH unit, the complainant was actually not entitled to any rates refund. However, HD later, on review, found that it had wrongly used the term "use and occupation charges" (instead of "mesne profits") in its letter to the complainant, such that the latter might have misunderstood that he was licensed to stay in the PRH unit and was thus eligible for rates refund. In the event, the Department exercised discretion and refunded him part of the rates for the period concerned.

Our Observations and Conclusion

7. We considered it reasonable of HD not to make any rates refund to the complainant since he was not an authorised PRH resident. His complaint was, therefore, unsubstantiated.

8. However, HD's subsequent change of mind did not have good grounds. The misused terminology in HD's letter did not warrant anything more than clarification of the matter and an apology to the complainant. There was absolutely no need to refund him part of the rates. The Ombudsman, therefore, considered this case substantiated other than alleged.

Recommendations

9. The Ombudsman recommended that HD remind staff to:

(a) always use correct terminology when demanding payment from occupants of PRH units; and

(b) rectify mistakes as quickly as possible, instead of rationalising them.

A case of careless writing and wrong decision

Housing Department ("HD")

Case No. OMB 2007/4958

Footbridge management – failure to alert purchasers of a Home Ownership Scheme estate to their responsibility of managing and maintaining a footbridge – unsubstantiated

The Complaint

The Owners' Corporation ("OC") of a Home Ownership Scheme ("HOS") estate alleged that HD had failed to inform purchasers that they had to manage and maintain a footbridge. The OC considered it unfair to be asked to shoulder the burden, as the footbridge was used mainly by residents of Estate A nearby.

Background

2. According to the land lease and Deed of Mutual Covenant ("DMC") of the HOS estate, the estate should be responsible for managing and maintaining the footbridge. Nevertheless, as the footbridge was used mainly by residents of Estate A (then a public rental housing estate), HD in its dual role as DMC manager of the HOS estate and manager of Estate A initially assumed the responsibility.

SUMMARIES OF SELECTED CASES CONCLUDED BY FULL INVESTIGATION



3. 15 years after the completion of the HOS estate, HD secured the agreement of the OC and residents of Estate A (about to turn a Tenants Purchase Scheme estate) to share the costs of maintaining the footbridge. They subsequently signed a Deed of Cost Sharing to the effect that, besides sharing such costs, the OC was also to be responsible for management of the footbridge.

4. Two years later, HD informed the OC that it would cease managing the footbridge for the OC. However, the OC refused to take over the responsibility.

5. The dispute continued. In another three years, the insurer for the footbridge declared the insurance policy void for lack of proper management and regular maintenance. The OC decided to close the footbridge.

6. Even though HD offered to resume managing the footbridge for six months and to continue the dialogue with the OC and Estate A, the OC insisted on closing the footbridge until a management mechanism could be established.

Response from HD

7. HD explained that when the HOS estate was put on sale, there were no guidelines governing what information should be provided in the sales brochure. However, the land lease and the DMC did stipulate the estate's responsibility for managing and maintaining the footbridge. The Terms and Conditions for the Sale and Purchase of Flats given by HD to the purchasers when the sales agreements were signed also reminded purchasers that the flats were sold under the terms of the land lease and that owners would be bound by the DMC.

Our Observations and Comments

8. It is not uncommon in Hong Kong to stipulate in the land lease the responsibility of the lessee to manage and maintain neighbouring public facilities. It is also a normal practice to state such responsibility in the DMC.

9. When the HOS estate was put on sale decades ago, there were indeed no policy or guidelines to regulate the disclosure of information in sales brochures. It was not until 1995 that the Law Reform Commission suggested that developers highlight salient points of DMCs in sales brochures.

10. The estate's responsibility to manage and maintain the footbridge was clearly stated in the land lease, the DMC and, more recently, in the Deed of Cost Sharing, which the OC had signed with full awareness. There was no unfairness in HD asking the OC to discharge its responsibility.

11. The Ombudsman, therefore, considered this complaint unsubstantiated.

Housing Department ("HD")

Case No. OMB 2008/2251
Tenants' divorce – rejecting the complainant's application for adding his new-born son to his tenancy – partially substantiated

Divorced but Household Splitting Pending

The complainant lived in a public rental housing unit with his wife ("Ms A") and two sons.

2. He later divorced Ms A. While their grown-up elder son chose to stay with the complainant, the Court granted custody of their younger son ("the second son") to Ms A. The complainant then applied to HD for household splitting with Ms A in the hope that they would each be allocated a unit. HD initially accepted his application. Meanwhile, the foursome continued to live in the existing unit.

3. Subsequently, the complainant remarried and had a son ("the third son"). As his new wife was not yet a Hong Kong resident, she was not eligible for addition to his tenancy. He applied for adding the third son to his tenancy and requested to keep the existing unit. However, HD rejected his application on the grounds that Ms A had refused to move out. The complainant considered HD's decision unfair.

Application Frozen

4. According to HD policy, the complainant's third son was eligible for addition to his tenancy. This eligibility should not have been affected by Ms A's refusal to leave.

5. However, when the complainant filed his application for adding his third son to his tenancy, he was actually asking for permission for the new household member to live in the existing unit. Since he was at the same time seeking household splitting, we could understand HD's suspension of action on his application until he could reach agreement with Ms A on the tenancy of the existing unit.

Delay Unreasonable

6. Nevertheless, after months, both the complainant and Ms A still refused to move out of the unit. We consider that in the circumstances, HD ought to have contemplated terminating the tenancy of the existing unit and allocating separate units to the divorcees, thereby resolving the stalemate. HD's prolonged inaction pending their unlikely reconciliation was unreasonable.

Conclusion

7. In this light, The Ombudsman considered the complaint partially substantiated.

Recommendation

8. The Ombudsman urged HD to draw up guidelines and provide training for its staff on how to deal with cases of this nature.

A case of poor handling and delay

Immigration Department ("Imm D")

Case No. OMB 2008/3397

Identity card number – issuing the same identity card number to two persons – substantiated

The Complaint

The complainant alleged that Imm D had mistakenly issued the same identity card number to him and another person.

The Event

2. When the complainant was born in 1987, Imm D assigned "Z" as the prefix for his birth certificate number.

3. A few years later, the complainant's mother applied for him a Hong Kong Special Administrative Region Passport. He was required by law to apply simultaneously for an identity card for minors under the age of 11. According to Imm D practice, his identity card number should be the same as that for his birth certificate. However, the officer concerned mistakenly entered the prefix "Y" instead of "Z" in his identity card.

4. When the complainant reached the age of 11, he applied for a juvenile identity card. This time, another officer failed to check his birth certificate carefully, thus continuing the error. When the complainant eventually applied for an adult identity card, he was required to produce only his juvenile identity card, and not his birth certificate, for verification. The discrepancy between his identity card number and his birth certificate number, therefore, again went unnoticed.

5. In 2008, the complainant's application for a Home Visit Permit at the China Travel Service ("CTS") was rejected because his identity card number was the same as that of a child already on CTS records. Upon the complainant's query, Imm D searched its records and discovered the

error. It had indeed allocated the same identity card number prefixed "Y" to the aforementioned child.

Staff Negligence

6. The mistake was clearly due to the negligence of Imm D staff. In particular, issue of birth certificates with the prefix "Y" only began in 1989. Hence, when the complainant applied for his juvenile identity card at the age of 11 in 1998, Imm D staff should have focussed and detected the anomaly.

7. The Ombudsman, therefore, considered this complaint substantiated.

Redress

8. Imm D apologised to the complainant and issued to him a new identity card with the correct prefix "Z".

Our Recommendations

9. Nevertheless, The Ombudsman urged Imm D to:

(a) enhance staff training in processing applications for identity documents;

(b) check all identity card numbers on its records for any similar cases; and

(c) duly compensate the complainant for any costs incurred in replacing or amending his other personal documents.

A case of staff negligence

Lands Department ("Lands D")

Case No. OMB 2007/2180

Drainage problem – failing to cope with a problem of frequent flooding related to a Short Term Tenancy ("STT") – substantiated

The Complaint

The complainant had complained to Lands D about frequent flooding on a street during the rainy season. The Department allegedly promised to look into the matter, but the problem persisted.

Lease Conditions

2. The flooding was caused by a car park on Government land at one side of the street. One of the standard conditions of the STT required the car park operator as lessee to provide drainage channels, but the District Lands Office ("DLO") under Lands D had failed to enforce that condition.

Lands D's Defence



3. Lands D argued that there had never been any report of flooding in the area before the site was put out to tender. At the District Lands Conference on the proposed tenancy, none of the representatives from other departments suggested that the lessee be required to provide drainage channels. As a result, although that was a standard condition of all STTs, such requirement had not been made a special condition of the STT in question. It would, therefore, be illogical to assume tenderers to have included the cost of constructing drainage channels in their bids. Accordingly, Lands D did not consider it appropriate to take action against the car park operator for failure to provide drainage channels.

4. In the event, at DLO's request, the Drainage Services Department carried out overall improvement to the drainage of the street.

Our Observations and Comments

5. Lands D's argument was puzzling and flimsy.

6. The standard and special conditions of a STT should both carry force and the parties signing the STT should comply. The standard conditions were actually attached to the tender notice for the STT in question. All tenderers should, therefore, be aware of the lessee's obligation to construct drainage channels. Clearly, DLO had the responsibility to enforce that lease condition. Even if DLO wished to waive this requirement for the car park operator, it should have sought proper authority for it, instead of exempting the car park operator on the lame excuse that such a requirement was not stated in the special conditions of the STT.

7. What DLO had done would simply encourage lessees to ignore lease conditions.

8. In light of the above, The Ombudsman considered this complaint substantiated.

Recommendations

9. The Ombudsman recommended that:

   (a) Lands D be more prudent when drawing up the conditions of Government land leases;

(b) DLOs should step up inspections and strictly enforce lease conditions; and

(c) where any obligation of a lessee was to be waived, proper authority should be sought beforehand.

10. Lands D generally accepted these recommendations.

A case of faulty procedures and abdication of responsibility

Lands Department ("Lands D")

Case No. OMB 2007/2632

Lands D – land control – failing to curb the illegal widening of a footpath – substantiated

The Complaint

A footpath flanking a park had been illegally widened to become a thoroughfare for heavy vehicles, thus affecting pedestrian safety. The complainant had complained to the District Lands Office ("DLO") under Lands D, but DLO had not taken effective enforcement action.

Question of Responsibility

2. The park was managed by the local rural committee ("RC") as licensee of the site. The local District Council had funded the installation of some facilities there, with maintenance by the District Office ("DO") under the Home Affairs Department.

3. Upon receiving the complaint, DLO first asked DO to take appropriate action, as DO had constructed a water channel along the footpath. DO replied that it was only responsible for maintaining the channel and DLO should deal with the complaint as a land control issue. DLO then asked RC to reinstate the footpath, but received no reply.

DLO Action Thwarted

4. At the request of a village representative, DLO decided to install an emergency crash gate at the entrance of the footpath to prevent vehicles from entering. However, the works encountered strong opposition from some villagers and had to be suspended.

Proposal for Regularisation

5. DLO then considered some residents' request for regularising the use of the widened footpath as a driveway. DO, however, pointed out

that some other residents opposed the proposal and suggested that DLO liaise with them to seek a consensus first.

6. DLO again asked RC to reinstate the footpath, but the latter only undertook to carry out some landscaping works.

Our Comments

7. Having clarified that DO was not responsible for maintaining the footpath, DLO should have pressed RC as licensee of the site to reinstate the footpath. DLO's procrastination had given people an impression of tacitly allowing the illegal widening of the footpath.

8. By failing to take prompt land control action, DLO had landed itself in a dilemma, caught between residents supporting and those opposing regularisation.

Conclusion

9. The Ombudsman, therefore, considered this complaint substantiated.

Recommendation

10. The Ombudsman recommended that Lands D immediately make it clear to the regularisation proponents that rather than trying to make the widening of the footpath a *fait accompli*, they must first file a formal application for consideration by the departments concerned.

A case of delay and lack of firm action

Leisure and Cultural Services Department ("LCSD") and Lands Department ("Lands D")

Case Nos. OMB 2006/4311; OMB 2007/2501
LCSD – park management – failing to resolve the problem of management and maintenance responsibility for a park, thereby wasting public resources – partially substantiated
Lands D – same – same – substantiated

The Complaint

The complainant alleged that the park near a private estate had been closed for many years and the public could not access the facilities there. She considered this a waste of public resources owing to the failure of LCSD and Lands D to resolve the problem of management and maintenance responsibility for the park.

Background

2. In March 1997, Lands D and the estate developer signed a new grant in which the special conditions required the developer to provide at its cost public facilities in the local open space where the park was located. The developer should ensure that the facilities met the requirements of the Director of Lands. Moreover, the developer was to be responsible for managing and maintaining the site and bear all the expenses.

3. In November 2000, having consulted the relevant departments, Lands D issued a Certificate of Compliance to confirm the developer's compliance with all the conditions of the new grant. In December, the owners' committee and property management company of the estate asked Government to take over the park.

4. LCSD refused to do so while Lands D pointed out that the special conditions of the new grant stipulated that Government authorities had no obligation to take back the local open space or any part thereof. As the owners of the estate were unwilling to continue with the responsibility to manage and maintain the park, the management company decided to close it.

Response from LCSD

5. Through Lands D, LCSD had repeatedly reminded the committee and management company to comply with the special conditions and advised them to improve the substandard playground equipment. However, they made no positive response. LCSD held that Government should not waive the responsibility of the developer or property owners just because they refused to comply with the lease conditions.

Response from Lands D

6. At the committee's request, Lands D consulted the Town Planning Board ("TPB") in December 2007. TPB replied that even if the playground equipment was removed, the planning requirement would not be contravened so long as the site remained a local open space available to Government and the public at all reasonable times.

7. The committee finally agreed to reopen the park, but would fence off the playground equipment temporarily until a consensus on a long-term arrangement could be reached among the property owners.

Our Observations and Comments

8. We agreed with LCSD that Government should not unconditionally waive the responsibility of the private developer or property owners and use public money to manage those recreational facilities. However, LCSD could have given timely comment on the safety standard of the facilities. It was not until November 2002 when LCSD was considering taking over the park that it found the facilities substandard.

9. Lands D had been tolerant towards the developer and property owners and adopted a conceding attitude. Without such a complaint, the problem would have remained unresolved.

Conclusion and Recommendations

10. This Office was aware that LCSD wanted to be fair and reasonable and did not wish to take over the park too hastily. However, had LCSD managed to explain clearly at the right time, the public would not have gained the wrong impression that Government was slipshod.

11. Lands D emphasised that re-entry on leased land was a very drastic measure that should not be taken lightly. However, we did not think that it could evade the issue. Suspension of enforcement action was not justifiable even though due regard had to be given to the sentiments and expectations of the residents.

12. The Ombudsman considered the complaint against LCSD partially substantiated and that against Lands D substantiated.

13. This Office was pleased that the Development Bureau had begun a comprehensive review of its policy on the provision of public facilities and open space in private developments. It is hoped that similar situations could be avoided in future. Meanwhile, The Ombudsman made the following recommendations to LCSD and Lands D:

For LCSD

(a) review the provision of playground equipment in the area quickly. More facilities should be provided in case of inadequacy;

For Lands D

(b) step up inspections at the park to ensure that the facilities are safe. Irregularities found must be subject to prompt and resolute lease enforcement action;

(c) search past records for similar cases to come up with a solution; and

(d) discuss with the relevant policy bureau and other departments and organisations immediately so as to prevent recurrence of similar problems.

A case of delay and failure to follow procedures

Rating and Valuation Department ("RVD") and Housing Department ("HD")

Case Nos. OMB 2008/2677-2678
RVD – rates assessment – failing to monitor the assessment of rateable values of market stalls – substantiated
HD – supervision of market licensee – failing to monitor a market licensee's submission of requisition forms to RVD – substantiated other than alleged

The Complaint

The complainants had rented certain market stalls from HD's market licensee in a public housing estate and had been paying rates through the licensee for some years. They discovered lately that the rateable values of their stalls had never been assessed by RVD and, therefore, suspected that the licensee had appropriated the rates.

2. The complainants complained to this Office against:

(a) RVD for failing to check the requisition forms submitted by the licensee to provide the necessary details for assessment of rateable values; and

(b) HD for failing to monitor the licensee's submission of the requisition forms.

Rates Assessment and Payment

3. Under its agreement with the licensee, HD each month collected from the licensee the rates for the whole market and then paid RVD. Before RVD finished assessing all the rateable values, HD would charge the licensee 5% of the rents as "provisional rates" for all market stalls, including those vacant. After RVD's assessment of the rateable values, HD would calculate the difference between the actual rates payable and the "provisional rates" and settle it with the licensee. The tenants of all stalls had already paid their shares of the "provisional rates" to the licensee.

4. When RVD first assessed the rateable values of the market several years ago, vacant stalls were excluded. Later, some of the vacant stalls were rented out, but RVD still failed to assess their rateable values. Thus, the rates paid by HD for the market did not cover those stalls.

5. On receiving this complaint, RVD immediately arranged rates assessment. However, the Department was time-barred from collecting some $400,000 of the outstanding rates.

RVD's Explanation and Remedies

6. After completing its initial assessment of the market stalls, RVD had kept a record of the vacant stalls for subsequent revaluation. However, the filing staff subsequently failed to bring up the case for

revaluation. Furthermore, RVD failed to detect from the requisition forms annually submitted by the licensee that assessment of rateable values had not been conducted for some stalls.

7. RVD has learned a lesson and has checked with the records of HD and the licensee to ensure assessment of all stalls. It has also set up a centralised file management system to strengthen internal monitoring and issued guidelines to staff on timely assessment of market stalls in new public housing estates.

Our Comments

8. For its negligence, the complaint against RVD was substantiated.

9. Meanwhile, the licensee had not appropriated any of the rates paid by the complainants. In fact, after RVD's assessment, any rates paid in excess had been refunded to them.

10. We found the allegation against HD unfounded because the licensee had been submitting requisition forms directly to RVD. HD was not in a position to monitor the licensee's submission of the forms. Nevertheless, HD could have checked the relevant information attached to RVD's quarterly demand notes for rates.

11. The complaint against HD was, therefore, substantiated other than alleged.

Recommendation

12. The Ombudsman recommended that HD issue guidelines to require staff to keep in view RVD's assessment of rateable values for new market stalls.

A case of negligence

Social Welfare Department ("SWD")

Case No. OMB 2007/2665
Disability Allowance – (a) improperly closing a Disability Allowance case without home visit at all; and (b) unreasonably refusing retrospective payment of Disability Allowance – partially substantiated

The Complaint

The complainant's mother ("Ms A") had been certified severely disabled by a doctor and hence granted Disability Allowance ("DA") by SWD. When her case was due for review after a year, SWD lost contact with

her and so could not confirm her continued eligibility. Her DA payment was thus stopped. Subsequently, Ms A passed away.

2. The complainant was dissatisfied that SWD had:

(a) rashly closed Ms A's DA case without first conducting a home visit; and

(b) unreasonably refused retrospective payment of DA after Ms A's death.

The Event

3. In January 2005, based on the doctor's medical assessment report, SWD granted DA to Ms A for 12 months.

4. Towards the end of that year, SWD staff tried to contact Ms A for case review, by calling her telephone number in the Department's computer records. However, that number was invalid. SWD staff then followed departmental guidelines and sent her three notification letters, the last one by registered mail. Since those letters had neither been responded to nor returned for non-delivery, SWD decided to stop issuing DA to Ms A.

5. In February 2007, the complainant informed SWD that Ms A had passed away in January and requested retrospective payment of DA, to which she considered Ms A to be entitled for the period January 2006 to January 2007. SWD rejected her request.

Our Comments

Complaint Point (a)

6. We found that the staff concerned had complied with SWD guidelines. It was only after three notification letters had been issued to Ms A without any response that her DA case was closed.

7. Nevertheless, on re-examining Ms A's case file, SWD discovered that the contact telephone number in her medical assessment report was different from that in the Department's computer records. Moreover, the report also showed her son's mobile telephone number. Had the staff concerned noticed and tried those numbers, they might have been able to contact Ms A.

8. As to whether a home visit should have been made, from the angle that home visit was not an essential step in DA review procedures, we would not consider it maladministration on SWD's part not to have conducted a home visit in this case. That said, SWD should certainly have been more sensitive to cases like this one, the client being over 80 and seriously ill, hence possibly having difficulties in reading or responding to SWD's letters. In such circumstances, a home visit should have been in order.

9. In sum, there was clearly negligence on SWD's part. The Ombudsman, therefore, considered complaint point (a) partially substantiated.

Complaint Point (b)

10. According to SWD policy, to be eligible for DA, one has to be certified severely disabled by a doctor of a public hospital or clinic. As Ms A had not undergone medical review and there was no medical assessment report to certify her severe disability during her final year, SWD could not agree to retrospective payment of DA as requested.

11. This Office found SWD bureaucratic. It had missed the very intent of the DA scheme, i.e. to help those severely disabled. Due to the special circumstances mentioned above, medical review could not have taken place and hence no medical assessment report could have been produced. Nevertheless, according to Ms A's earlier medical assessment report and her final medical records, her dementia had never shown any improvement and she also had a heart problem, thus requiring constant care. It should take only common sense to recognise Ms A as being still "severely disabled" and eligible for DA in her final year.

12. While SWD had followed its policy and guidelines, it showed a lack of flexibility and compassion. The Ombudsman, therefore, considered complaint point (b) partially substantiated.

13. As SWD insisted on its requirement of a medical assessment report, we sought the Hospital Authority's assistance to produce one based on Ms A's previous report and final medical records. In the event, such a report was sent to SWD, which then made the retrospective payment of DA accordingly.

Recommendations

14. The Ombudsman recommended that SWD remind staff to be more careful in referring to file records and to be more proactive and caring when serving the elderly and feeble.

A case of negligence and lack of flexibility

Transport Department ("TD")

Case No. OMB 2007/4056

Management of public transport interchange – shirking responsibility when handling a complaint about illegal parking of bicycles at a public transport interchange – substantiated

The Complaint

The property management agent ("PMA") of a residential complex had complained to various Government departments about illegal parking of bicycles at the public transport interchange ("PTI") underneath the complex.

2. The problem had persisted for one and a half years. The PMA thus complained to this Office against the departments for shirking responsibility.

Management Responsibility



3. We found TD primarily responsible.

4. The PTI was built by the developer of the residential complex and then handed over to the Financial Secretary Incorporated as required by the land lease. Later, TD took over the PTI as the user department.

5. Section 344 of the Accommodation Regulations provides that the user department, after taking over such a property, shall manage it and monitor its operation and utilisation. TD should, therefore, be responsible for managing the PTI in question.

6. However, TD argued that the management of the PTI should be the "shared responsibility" of all those departments listed in a Maintenance Schedule ("the Schedule") drawn up by the Highways Department, setting out the duties of various departments in maintenance and repairs of the PTI. The Schedule did not spell out which department should handle illegal parking of bicycles. Furthermore, there was no legislation empowering TD to remove such bicycles or issue clearance notices to their owners.

7. As a result, TD kept referring the complaint to other departments for action.

Our Comments

8. It was ridiculous that TD, the user department and thus manager of the PTI, had been trying to pass to other departments listed in the Schedule the responsibility for coping with the problem of illegal parking of bicycles at the PTI. Clearly, the Schedule relates to quite a different subject – maintenance and repairs.

9. While assistance from other departments might be necessary, the overall responsibility rested with TD.

Conclusion and Recommendations

10. The Ombudsman, therefore, considered this complaint substantiated.

11. In this light, The Ombudsman recommended that TD:

(a) conduct a comprehensive review on its management responsibility as the user department of PTIs; and

(b) draw up guidelines on the day-to-day management of PTIs for staff.

A case of shirking of responsibility

Transport Department ("TD")

Case No. OMB 2007/6091

Roadside railing – installing railing along the pavement outside a vehicle repairs shop, thus affecting its viability – substantiated other than alleged

The Complaint

In November 2007, the complainant opened a vehicle repairs shop on the ground floor of an industrial building. In December, he saw TD installing railing along the pavement outside the shop without prior notice. Vehicles could not then enter the shop and business would suffer. He complained but TD only agreed to suspend installation and refused to undertake never to install any railing. The complainant considered his complaint not properly handled.

Public Consultation Conducted

2. The need to install the railing had arisen from a complaint received by the Lands Department ("Lands D") in April 2007 about vehicles frequently going in and out of an adjacent shop in the same industrial building, causing inconvenience and danger to pedestrians. As this contravened the land lease of the entire building, Lands D requested TD to consider installing the railing. TD asked the Home Affairs Department ("HAD") to conduct public consultation. As no objection was received from the public, except from the management company of the building itself, TD requested the Highways Department in July 2007 to proceed with installation.

3. We considered TD to have made a right decision to install the railing for pedestrian safety and the land lease restriction. TD had also duly asked HAD to conduct public consultation. As the complainant's shop was not yet in existence during the consultation, it was naturally impossible to give the complainant "prior notice" then.

Complainant's Request Unreasonable

4. We also considered it appropriate for TD to decline the complainant's request for an undertaking never to install the railing. Before renting the shop space for a vehicle repairs shop, the complainant should have examined the land lease of the building and realised its disallowance of vehicular access via the pavement in front of the shop.

5. This complaint was, therefore, in itself not substantiated.

Other Observations

6. Nevertheless, we noted that the complainant afterwards applied to Lands D for a waiver of the land lease restriction. As TD did not support it, Lands D turned down the application.

7. We found it puzzling that TD should:

(a) initially decide to install the railing for pedestrian safety and the land lease restriction;

(b) then for no good reason, agree to suspend the works; and

(c) finally refuse to support the complainant's application for waiver of the land lease condition.

8. That was a series of self-contradictory acts. Furthermore, by suspending the installation of the railing, TD was in fact condoning non-compliance of the land lease condition by the complainant, although on paper it did not support waiver of the condition. This hindered lease enforcement action by Lands D and gave the public an impression that Government departments lack cooperation.

Conclusion and Recommendation

9. Hence, overall, The Ombudsman considered this complaint substantiated other than alleged.

10. The Ombudsman recommended that TD review the case and work in unison with Lands D on the issues of the land lease restriction and the need for the railing.

A case of contradictory stance and lack of inter-departmental cooperation

Annex 14

Summaries of Selected Cases Concluded by Full Investigation

Water Supplies Department ("WSD")

Case No. OMB 2007/4684

Complaint handling – failing to follow up a complaint thoroughly, so that nuisance calls continued – substantiated

The Complaint

In September 2005, the complainant started using a telephone number but soon received numerous calls regarding plumbers' licences. She complained repeatedly to WSD and demanded action. WSD failed to handle it properly and she continued to receive nuisance calls over two years.

Reasons for Persistent Nuisance

2. The number was formerly that of the WSD Licensed Plumbers Registry. Its use had officially ceased on 1 April 2005. Despite the complaint, some WSD staff still referred to outdated information when answering public enquiries on plumbers' licences and wrongly gave that number for further enquiries. Moreover, the WSD website continued to list that number as one of its contacts.

3. Meanwhile, a WSD staff member who taught part-time at an Vocational Training Council institute thought the number to be still valid for WSD enquiries and released it to his students.

Insufficient Notification

4. WSD indicated that before use of the telephone number ceased, WSD had notified various parties through its external announcement and internal notification arrangements. However, we doubted whether all the parties concerned had been fully informed.

5. In internal communication, although matters concerning plumbers' licences had been taken over by the Customer Telephone Enquiry Centre, some staff members (including those at the Enquiry Centre) were found repeatedly advising enquirers to call that number. It was evident that some Enquiry Centre staff were not aware of their duty to answer such enquiries.

6. As regards external communication, WSD explained that since the number was not for use by other departments, they were not notified individually when its use ceased. We considered this argument clearly unsound as District Offices often had to answer different public enquiries, including those on WSD services.

Serious Delay in Complaint Handling

7. WSD had simply failed to examine thoroughly the crux of the problem when it followed up the complaint. It merely left it to individual staff members to handle the problem on their own and make different decisions each time the complainant raised a new issue. As the handling procedures lacked coordination, thorough discussion and examination, only a partial solution could be offered each time a complaint was received. Worse still, some staff members continued to give the public the disused telephone number.

8. Against this background, The Ombudsman considered the complaint substantiated.

Our Recommendations

9. WSD accepted our recommendations to:

(a) review its complaint handling mechanism and procedures and consider requiring case officers to refer complaints that had been lodged repeatedly or remained unresolved for some time to their supervisors for coordinated handling;

(b) remind staff members seeking to take up outside work in relation to water facilities or WSD operations that they should check whether any information to be released about the Department might be outdated;

(c) review the Department's internal notification mechanism, especially where the matter to be notified involves new correspondence addresses and telephone numbers and may be released to the public; and

(d) remind staff at all levels of the need to raise their service attitude and sensitivity in all areas and to endeavour to provide a client-centered service.

A case of delay and lack of internal communication

Annex 15

Summaries of Selected Cases on Code on Access to Information

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

Buildings Department ("BD") and Food and Environmental Hygiene Department ("FEHD")

Case Nos. OMB 2008/0155(I) – 0156(I)

Access to information – failing to heed the complainant's request for a copy of the seepage test report concerning his unit – substantiated

Request Refused

The Joint Office ("JO") of BD and FEHD had conducted a test in the complainant's unit for water seepage. The complainant subsequently asked for a copy of the investigation report but was refused.

Code on Access to Information

2. Government's Code on Access to Information ("the Code") aims to be as open and transparent as possible. It stipulates that the Access to Information Officer ("AIO") in any department should ensure that requests for information be handled according to the spirit of the Code. Refusal of such requests should best be decided at the directorate level and the applicant informed of the decision in writing, citing the reasons applicable set out in Part 2 of the Code. Such reply is also to give information on the channels for departmental review and complaint.

Handling of Request

3. FEHD would provide a copy of the "seepage test result" upon request. However, it considered the information requested to be a copy of the "seepage investigation report". It, therefore, referred the request to BD.

4. Meanwhile, BD considered the seepage investigation report a document for JO's internal use only, as it contained information about the interior condition of the units involved, professional opinions of its investigation team and certain personal information. Consequently, it refused the complainant's request for a copy of the report.

Initiative Lacking

5. We considered that FEHD should have taken the initiative to explain to the complainant that JO could provide the "seepage test result" and upon completion of the seepage investigation, a summary of the findings.

Procedures Not Followed

6. BD did not consult its AIO before refusing the complainant's request. Nor was the decision made at the directorate level. Furthermore, it had failed to give reasons as set out in the Code or the

review and complaint channels. As a result, the complainant could not understand the rationale for the decision and was not sure about availability of review. In short, his request had been badly handled.

7. The Ombudsman considered this complaint substantiated.

Recommendations

8. The Ombudsman recommended that JO apologise to the complainant. Moreover, BD should identify which part of the seepage investigation report could be disclosed according to the Code. It should also revise its internal guidelines to ensure that all requests for information would be processed in accordance with the spirit of the Code.

A case of deficiency in policy implementation



List of Tables

TABLE 1

CASELOAD

	Reporting year#				
	04/05	05/06	06/07	07/08	08/09
(A) Enquiries received	**11,742**	**14,633**	**15,626**	**12,169**	**14,005**
(B) Complaints received@	**4,654**	**4,266**	**5,606**	**4,987**	**5,386[853]**
(C) Complaints brought forward	**1,088**	**719**	**676**	**942**	**1,285**
(D) Complaints for processing = (B) + (C)	**5,742**	**4,985**	**6,282**	**5,929**	**6,671**
(E) Complaints handled and concluded	**5,023**	**4,309**	**5,340**	**4,644**	**5,701[1,225]**
(i) Complaints pursued	**2,004**	**1,825**	**1,716**	**1,977**	**2,684[411]**
By preliminary inquiries	**1,873**	**1,758**	**1,643**	**1,938**	**2,437[224]**
By referral to complainee departments/ organisations for replies (INCH)	209	185	143	81	148
By rendering assistance/clarification (RAC)	1,664	1,573	1,500	1,857	2,289[224]
By full investigation	**125**	**55**	**71**	**38**	**247[187]**
- Withdrawn/Discontinued	0	2	0	1	1
- Substantiated	31	13	15	9	21
- Partially substantiated	46	14	16	13	171[161]
- Unsubstantiated	45	26	39	14	20[1]
- Inconclusive^	0	0	0	0	0
- Substantiated other than alleged	3	0	1	1	34[25]
By mediation	**6**	**12**	**2(6*)**	**1(3*)**	**0(0*)**
(ii) Complaints screened out	**1,948**	**1,113**	**2,385**	**1,246**	**1,108[100]**
- Restrictions	1,132	351	394	375	477[76]
- Outside jurisdiction	816	762	1,991	871	631[24]
(iii) Complaints not pursued	**1,071**	**1,371**	**1,239**	**1,421**	**1,909[714]**
- Discontinued	-	137	57	436	110[38]
- Withdrawn	-	147	164	157	245
- Not undertaken@	-	1,087	1,018	828	1,554[676]
(F) Percentage of complaints concluded = (E) ÷ (D)	**88%**	**86%**	**85%**	**78.3%**	**85.5%**
(G) Total cases carried forward = (D) - (E)	**719**	**676**	**942**	**1,285**	**970**
(H) Number of direct investigations completed	**5**	**4**	**4**	**4**	**6**
(I) Direct investigation assessment reports produced	**6**	**6**	**5**	**2**	**4**

\# Each reporting year is from 1 April to 31 March of the next year.
@ From 2006/07, these exclude "complaints to others copied to us". Please refer to the "Glossary of Terms".
^ Previously "Incapable of determination".
* Number of cases attempted for mediation but not accepted by party(ies) concerned.
[ ] Figures represent the number of topical cases (not available before 2008/09).

Table 2 & 3

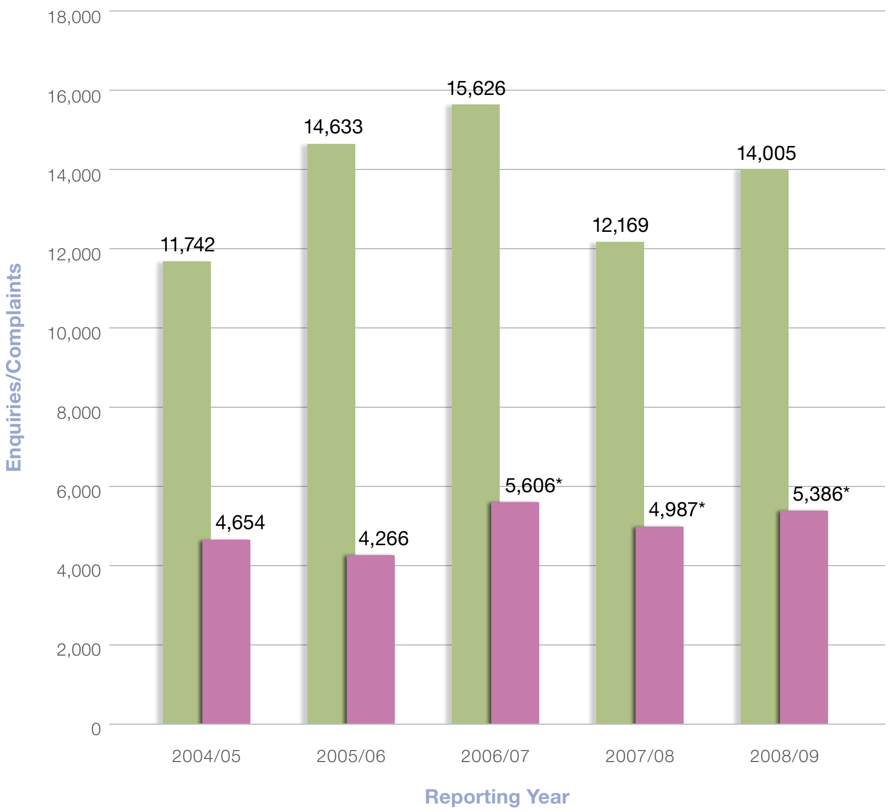
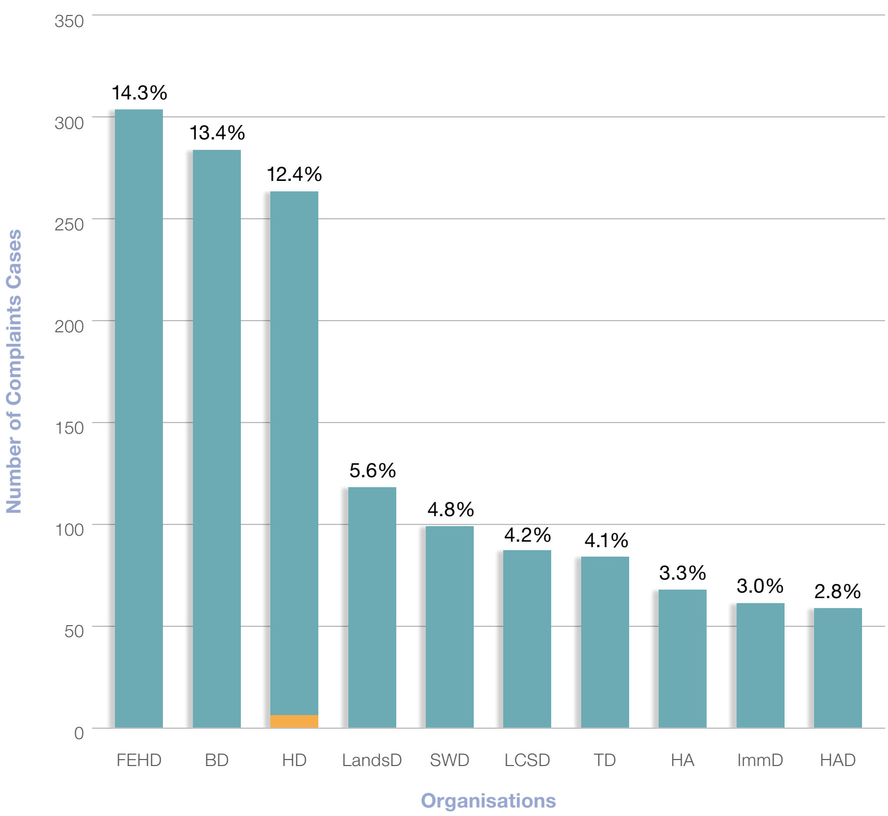


Table 2
Enquiries/ Complaints Received



Note 1.
"Complaint Cases Pursued" are cases handled by way of preliminary inquiries, full investigation or mediation.

Note 2.
The top ten organisations accounted for 67.9% of the complaints pursued.

Note 3.
Signifies topical complaints (arising from the same social topics).

Table 3
Complaint Cases Pursued: Top Ten Organisations

Table 4

Distribution of Enquiries/Complaints

Organisation		Enquiries	Complaints
Agriculture, Fisheries and Conservation Department	(AFCD)	75	56
Airport Authority	(AA)	10	6
Architectural Services Department	(Arch SD)	17	10
Audit Commission	(Aud)	0	1
Auxiliary Medical Service	(AMS)	2	1
Buildings Department	(BD)	578	413
Census and Statistics Department	(C & SD)	6	4
Civil Aid Service	(CAS)	7	2
Civil Aviation Department	(CAD)	8	5
Civil Engineering and Development Department	(CEDD)	14	17
Companies Registry	(CR)	7	10
Correctional Services Department	(CSD)	46	122
Customs and Excise Department	(C&ED)	52	35
Department of Health	(DH)	100	50
Department of Justice	(D of J)	36	19
Drainage Services Department	(DSD)	40	22
Electrical and Mechanical Services Department	(E & MSD)	28	13
Employees Retraining Board	(ERB)	17	6
Environmental Protection Department	(EPD)	79	41
Equal Opportunities Commission	(EOC)	26	14
Fire Services Department	(FSD)	59	36
Food and Environmental Hygiene Department	(FEHD)	928	476
General Office of the Chief Executive's Office	(GOCEO)	10	8
Government Laboratory	(Govt Lab)	0	1
Government Logistics Department	(GLD)	9	5
Government Property Agency	(GPA)	11	9
GS – Chief Secretary for Administration's Office	(GS-CS)	51	45
GS – Civil Service Bureau	(GS-CSB)	24	26
GS – Commerce and Economic Development Bureau	(GS-CEDB)	6	4
GS – Commerce, Industry and Technology Bureau	(GS-CITB)	1	0
GS – Constitutional and Mainland Affairs Bureau	(GS-CMAB)	9	4
GS – Development Bureau	(GS-DEVB)	4	7
GS – Education Bureau	(GS-EDB)	129	71

Organisation		Enquiries	Complaints
GS – Environment Bureau	(GS-ENB)	2	2
GS – Financial Services and the Treasury Bureau	(GS-FSTB)	8	4
GS – Food and Health Bureau	(GS-FHB)	3	9
GS – Health, Welfare and Food Bureau	(GS-HWFB)	1	0
GS – Home Affairs Bureau	(GS-HAB)	3	10
GS – Labour and Welfare Bureau	(GS-LWB)	19	26
GS – Security Bureau	(GS-SB)	11	14
GS – Transport and Housing Bureau	(GS-THB)	12	21
GS – Chief Secretary for Administration's Private Office	(GS-CSAPO)	2	0
GS – Financial Secretary's Office	(GS-FS OFF)	0	1
Highways Department	(Hy D)	51	41
Home Affairs Department	(HAD)	142	115
Hong Kong Arts Development Council	(HKADC)	1	1
Hong Kong Examinations and Assessment Authority	(HKEAA)	47	124
Hong Kong Housing Authority	(HKHA)	42	5
Hong Kong Housing Society	(HKHS)	35	26
Hong Kong Monetary Authority	(HKMA)	69	628
Hong Kong Observatory	(HKO)	13	6
Hong Kong Sports Institute Limited	(HKSI)	1	1
Hospital Authority	(HA)	453	196
Housing Department	(HD)	943	462
Immigration Department	(Imm D)	409	147
Information Technology Services Department	(ITSD)	2	0
Inland Revenue Department	(IRD)	85	68
Intellectual Property Department	(IPD)	11	8
Judiciary Administrator	(JA)	152	54
Kowloon-Canton Railway Corporation	(KCRC)	1	2
Labour Department	(LD)	186	69
Land Registry	(LR)	11	4
Lands Department	(Lands D)	261	233
Legal Aid Department	(LAD)	183	61
Legislative Council Secretariat	(LCS)	1	3
Leisure and Cultural Services Department	(LCSD)	225	186

TABLE 4

DISTRIBUTION OF ENQUIRIES/COMPLAINTS

Organisation		Enquiries	Complaints
Mandatory Provident Fund Schemes Authority	(MPFA)	84	18
Marine Department	(MD)	14	8
Office of the Telecommunications Authority	(OFTA)	42	32
Official Receiver's Office	(ORO)	51	17
Planning Department	(Plan D)	17	25
Post Office	(PO)	126	71
Privacy Commissioner for Personal Data	(PCPD)	21	11
Radio Television Hong Kong	(RTHK)	13	5
Rating and Valuation Department	(RVD)	35	23
Registration and Electoral Office	(REO)	18	8
Securities and Futures Commission	(SFC)	52	43
Social Welfare Department	(SWD)	527	180
Student Financial Assistance Agency	(SFAA)	94	49
Television and Entertainment Licensing Authority	(TELA)	3	10
Trade and Industry Department	(TID)	5	3
Transport Department	(TD)	219	168
Treasury	(Try)	10	7
Urban Renewal Authority	(URA)	23	11
Vocational Training Council	(VTC)	20	9
Water Supplies Department	(WSD)	253	116
Total		**7,401**	**4,880**

Note 1. The total number of enquiries and complaints received in Table 1 are 14,005 and 5,386 respectively. They are different from the figures shown in Table 3 for the following reasons:

* An enquiry/complaint involving more than one organisation is shown against each of the organisation.

* Enquiries/complaints involving bodies outside The Ombudsman's jurisdiction are not shown.

Note 2. Organisations under Schedule 1 to The Ombudsman Ordinance with no enquiries/complaints received in the reporting year are not shown.

Note 3. Excluding "Complaints to others copied to us" from 2006/07.

Table 5, 6 & 7

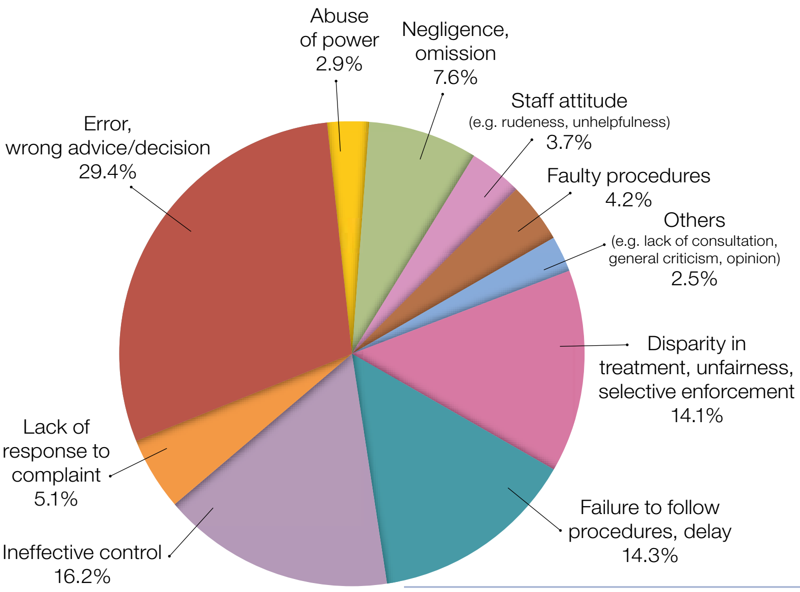


Table 5
Nature of Complaints

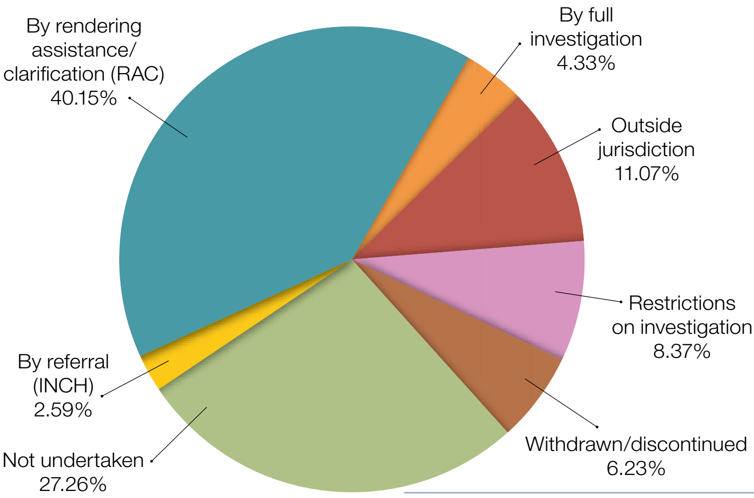


Table 6
Classification of Complaints Concluded: 5,701 Cases

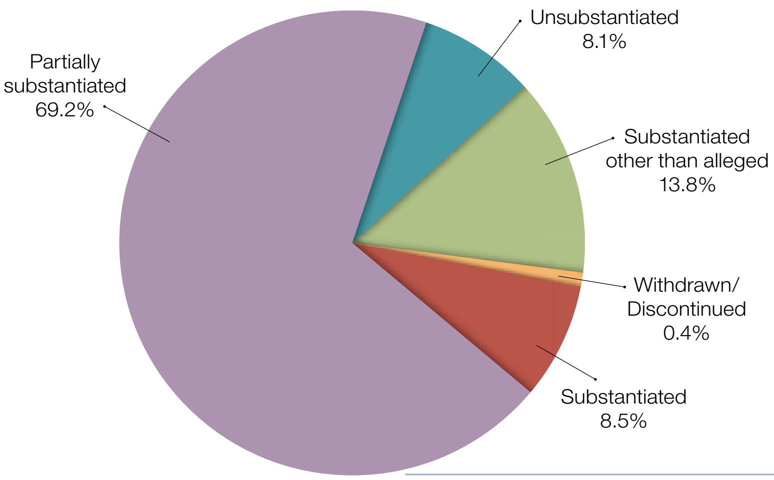


Table 7
Results of Complaints Concluded by Full Investigation: 247 Cases

Table 8

Result of Complaints Concluded by Rendering Assistance/Clarification

Organisation	No. of complaints	Remedial action taken/ suggested	No evidence of maladministration	Inconclusive	Ombudsman's suggestions on systemic improvement
Agriculture, Fisheries and Conservation Department	24	8 (33%)	15 (63%)	1 (4%)	7
Airport Authority	8	2 (25%)	6 (75%)		5
Architectural Services Department	4		4 (100%)		
Auxiliary Medical Service	1	1 (100%)			1
Buildings Department	274	50 (18%)	220 (80%)	4 (2%)	17
Civil Aviation Department	3		3 (100%)		
Civil Engineering and Development Department	11	3 (27%)	7 (64%)	1 (9%)	
Companies Registry	9		9 (100%)		
Correctional Services Department	30	1 (3.3%)	28 (93.4%)	1 (3.3%)	
Customs and Excise Department	15	1 (7%)	14 (93%)		1
Department of Health	23	3 (13%)	19 (83%)	1 (4%)	1
Department of Justice	4		4 (100%)		
Drainage Services Department	9	2 (22%)	7 (78%)		
Electrical and Mechanical Services Department	13	2 (15%)	11 (85%)		
Employees Retraining Board	2	1 (50%)	1 (50%)		
Environmental Protection Department	27	3 (11%)	23 (85%)	1 (4%)	1
Equal Opportunities Commission	8		8 (100%)		
Fire Services Department	8	4 (50%)	4 (50%)		2
Food and Environmental Hygiene Department	283	70 (24.7%)	211 (74.6%)	2 (0.7%)	24
General Office of the Chief Executive's Office	2		2 (100%)		
Government Laboratory	2		2 (100%)		
Government Logistics Department	1		1 (100%)		
Government Property Agency	2	1 (50%)	1 (50%)		
Government Secretariat					
- Chief Secretary for Administration's Office	23	8 (35%)	15 (65%)		1
- Civil Service Bureau	3		3 (100%)		
- Commerce and Economic Development Bureau	4		4 (100%)		
- Constitutional and Mainland Affairs Bureau	1		1 (100%)		
- Development Bureau	5		5 (100%)		1
- Education and Manpower Bureau	1		1 (100%)		1
- Education Bureau	22	2 (9%)	19 (86%)	1 (5%)	3
- Environment Bureau	1		1 (100%)		
- Financial Services and the Treasury Bureau	3		3 (100%)		
- Health, Welfare and Food Bureau	7	2 (29%)	5 (71%)		
- Home Affairs Bureau	3	1 (33%)	2 (67%)		
- Labour and Welfare Bureau	10		10 (100%)		1
- Security Bureau	4	1 (25%)	3 (75%)		
- Transport and Housing Bureau	8		8 (100%)		

Organisation	No. of complaints	Remedial action taken/ suggested	No evidence of maladministration	Inconclusive	Ombudsman's suggestions on systemic improvement
Highways Department	13	1 (8%)	12 (92%)		2
Home Affairs Department	55	11 (20%)	43 (78%)	1 (2%)	12
Hong Kong Examinations and Assessment Authority	13	2 (15%)	11 (85%)		
Hong Kong Housing Authority	3		3 (100%)		
Hong Kong Housing Society	13		13 (100%)		
Hong Kong Monetary Authority	9		9 (100%)		
Hong Kong Observatory	1		1 (100%)		
Hong Kong Police Force	1		1 (100%)		
Hospital Authority	78	16 (21%)	61 (78%)	1 (1%)	2
Housing Department	418	27 (6%)	387 (93%)	4 (1%)	8
Immigration Department	62	6 (9.7%)	55 (88.7%)	1 (1.6%)	12
Independent Commission Against Corruption	1			1 (100%)	
Inland Revenue Department	32	5 (16%)	27 (84%)		1
Intellectual Property Department	2		2 (100%)		
Judiciary Administrator	23	4 (17.4%)	18 (78.3%)	1 (4.3%)	1
Kowloon-Canton Railway Corporation	2		2 (100%)		1
Labour Department	23	2 (9%)	21 (91%)		3
Land Registry	2		2 (100%)		
Lands Department	124	33 (26.6%)	90 (72.6%)	1 (0.8%)	10
Legal Aid Department	19	2 (11%)	17 (89%)		
Legislative Council Secretariat	3	1 (33%)	2 (67%)		
Leisure and Cultural Services Department	161	18 (11%)	141 (88%)	2 (1%)	12
Mandatory Provident Fund Schemes Authority	6	3 (50%)	3 (50%)		2
Marine Department	7		7 (100%)		
Not Specified	18		18 (100%)		
Office of the Telecommunications Authority	17	1 (6%)	16 (94%)		
Official Receiver's Office	11	3 (27%)	8 (73%)		
Other Permanent Non-statutory Bodies	1		1 (100%)		
Planning Department	8	2 (25%)	6 (75%)		
Post Office	27	8 (29.6%)	18 (66.7%)	1 (3.7%)	3
Privacy Commissioner for Personal Data	3		3 (100%)		
Private Organisations/Individual/Companies	1	1 (100%)			
Radio Television Hong Kong	3		3 (100%)		
Rating and Valuation Department	12	1 (8%)	11 (92%)		
Registration and Electoral Office	6		5 (83%)	1 (17%)	
Securities and Futures Commission	4	1 (25%)	3 (75%)		
Social Welfare Department	81	4 (5%)	77 (95%)		2
Student Financial Assistance Agency	14	4 (29%)	9 (64%)	1 (7%)	2

TABLE 8

RESULT OF COMPLAINTS CONCLUDED BY RENDERING ASSISTANCE/CLARIFICATION

Organisation	No. of complaints	Remedial action taken/ suggested	No evidence of maladministration	Inconclusive	Ombudsman's suggestions on systemic improvement
Television and Entertainment Licensing Authority	7	1 (14.3%)	5 (71.4%)	1 (14.3%)	2
Transport Department	73	14 (19.2%)	58 (79.4%)	1 (1.4%)	13
Urban Renewal Authority	4		4 (100%)		
Vocational Training Council	3		3 (100%)		
Water Supplies Department	67	20 (30%)	46 (69%)	1 (1%)	10
Total	**2,289**	**357**	**1,902**	**30**	**164**

Note 1. Organisations under Schedule 1 to The Ombudsman Ordinance with no complaints concluded by Rendering Assistance/ Clarification are not shown.

Table 9

Processing Time of Complaints Concluded

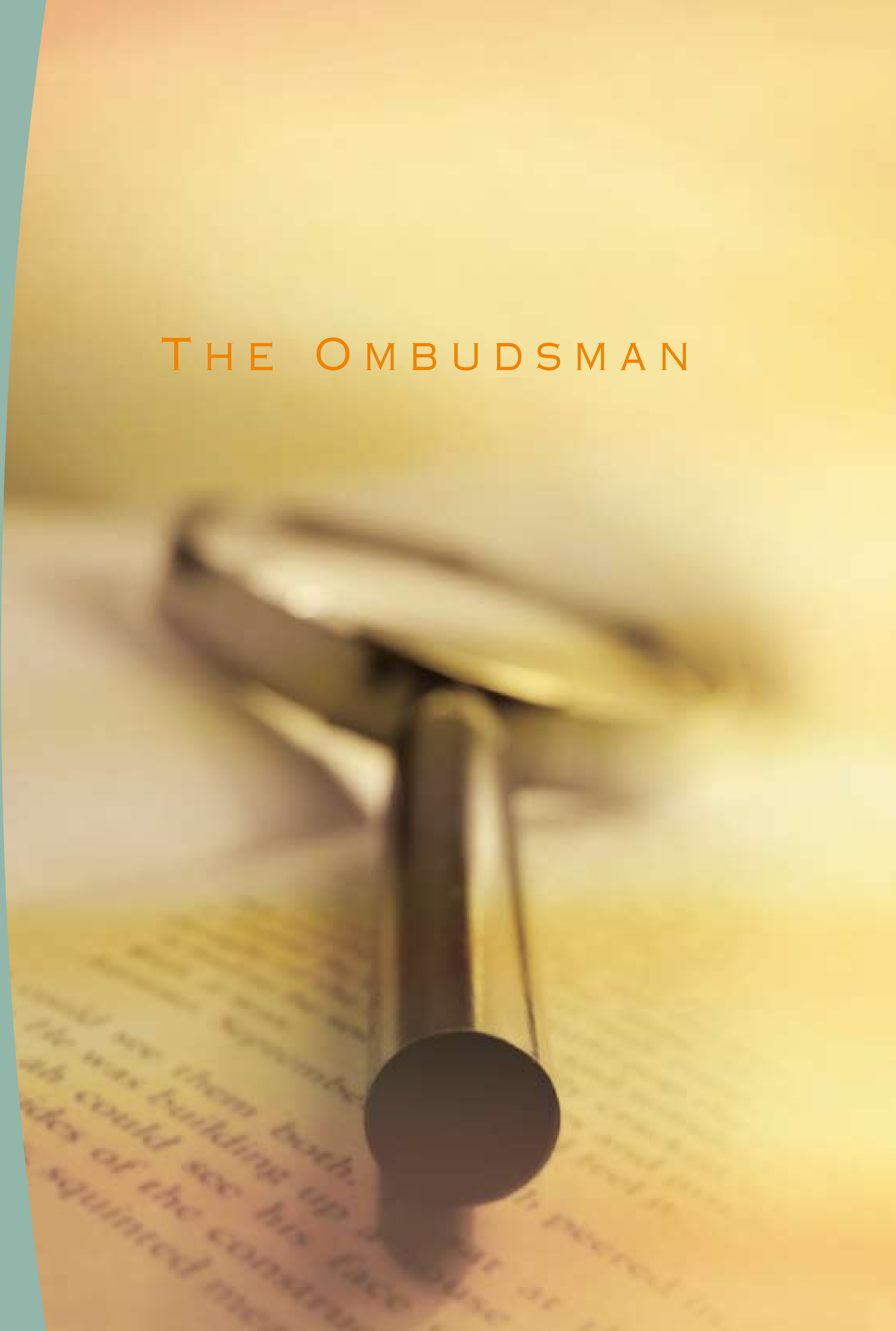
Processing Time of Complaints Concluded

TIME \ YEAR	04/05	05/06	06/07	07/08	08/09
Less than 1 month	52.8%	56.4%	64.7%	49.7%	46.6%
1 – 3 months	12.5%	15.4%	11.6%	18.4%	25.9%
3 – 6 months	32.9%	26.2%	22.3%	30.4%	26.0%
6 – 9 months	1.0.%	1.3%	0.8%	0.9%	0.8%
9 – 12 months	0.6%	0.3%	0.5%	0.4%	0.3%
More than 12 months	0.2%	0.4%	0.1%	0.2%	0.4%
Total	**5,023**	**4,309**	**5,340**	**4,644**	**5,701**

Processing Time for Complaints Concluded by Full Investigation and Other Modes

TIME \ YEAR	04/05	05/06	06/07	07/08	08/09
Concluded by full investigation					
Less than 3 months	0.8%	3.6%	0.0%	0.0%	10.9%
3 – 6 months	36.8%	23.7%	36.6%	23.6%	73.7%
6 – 9 months	28.8%	32.7%	22.5%	21.1%	4.4%
9 – 12 months	24.8%	21.8%	32.4%	34.2%	5.3%
More than 12 months	8.8%	18.2%	8.5%	21.0%	5.7%
Number of complaints	**125**	**55**	**71**	**38**	**247**
Concluded by other modes					
Less than 1 month	54.1%	57.1%	65.6%	50.1%	48.7%
1 – 3 months	12.8%	15.6%	11.7%	18.6%	26.6%
3 – 6 months	32.8%	26.3%	22.1%	30.4%	23.9%
6 – 9 months	0.3%	0.9%	0.5%	0.7%	0.6%
9 – 12 months	0.0%	0.0%	0.1%	0.2%	0.1%
More than 12 months	0.0%	0.1%	0.0%	0.0%	0.1%
Number of complaints	**4,898**	**4,254**	**5,269**	**4,606**	**5,454**

The Ombudsman



Financial Statements For The Year Ended

31st March 2009

KPMG

Independent Auditor's Report to The Ombudsman

(Established in Hong Kong pursuant to The Ombudsman Ordinance)

We have audited the financial statements of The Ombudsman set out on pages 3 to 16, which comprise the balance sheet as at 31 March 2009, and the statement of income and expenditure, the statement of changes in funds and the cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory notes.

The Ombudsman's responsibility for the financial statements

The Ombudsman is responsible for the preparation and the true and fair presentation of these financial statements in accordance with Hong Kong Financial Reporting Standards issued by the Hong Kong Institute of Certified Public Accountants. This responsibility includes designing, implementing and maintaining internal control relevant to the preparation and the true and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. This report is made solely to you, in accordance with our agreed terms of engagement, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

We conducted our audit in accordance with Hong Kong Standards on Auditing issued by the Hong Kong Institute of Certified Public Accountants. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance as to whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and true and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by The Ombudsman, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Independent Auditor's Report to The Ombudsman (continued)

(Established in Hong Kong pursuant to The Ombudsman Ordinance)

Opinion

In our opinion, the financial statements give a true and fair view of the state of affairs of The Ombudsman as at 31 March 2009 and of its surplus and cash flows for the year then ended in accordance with Hong Kong Financial Reporting Standards.

Certified Public Accountants
8th Floor, Prince's Building
10 Chater Road
Central, Hong Kong
15 May 2009

Statement of Income and Expenditure for The Year Ended 31 March 2009

(Expressed in Hong Kong dollars)

	Note	2009	2008
Income			
Government subventions	3	$ 89,037,000	$ 81,652,442
Amortisation of Government subventions	3	2,965,040	2,965,040
Interest income on bank deposits		8,615,545	10,170,894
Other income		2,754	11,594
		$ 100,620,339	$ 94,799,970
Expenditure			
Operating expenses	4	(72,526,680)	(65,617,386)
Surplus for the year		$ 28,093,659	$ 29,182,584
Accumulated funds brought forward		225,396,808	196,214,224
Accumulated funds carried forward		$ 253,490,467	$ 225,396,808

Statement of changes in funds for the year ended 31 March 2009

The surplus in the statement of income and expenditure is the only change in net funds for the current and prior years.

The notes on pages 6 to 16 form part of these financial statements.

Balance Sheet as at 31 March 2009

(Expressed in Hong Kong dollars)

	Note	2009	2008
ASSETS			
Non-current assets			
Property, plant and equipment	7	$ 19,932,604	$ 20,998,597
Prepaid operating lease	8	65,019,296	66,413,516
		$ 84,951,900	$ 87,412,113
Current assets			
Deposits and prepayments		$ 797,562	$ 793,267
Interest receivable		3,632,164	4,490,898
Time deposits with maturity over three months		244,193,000	224,206,000
Cash and cash equivalents	9	13,174,601	4,343,179
		$ 261,797,327	$ 233,833,344
Total assets		$ 346,749,227	$ 321,245,457
LIABILITIES			
Non-current liabilities			
Contract gratuity payable - non-current	10	$ 3,432,868	$ 3,381,877
Government subventions - non-current	3	79,842,441	82,807,477
		$ 83,275,309	$ 86,189,354
Current liabilities			
Other payables and accruals		$ 1,611,944	$ 3,675,939
Contract gratuity payable - current	10	5,406,467	3,018,312
Government subventions - current	3	2,965,040	2,965,044
		$ 9,983,451	$ 9,659,295
Total liabilities		$ 93,258,760	$ 95,848,649
FUNDS			
Accumulated funds		$ 253,490,467	$ 225,396,808
Total funds and liabilities		$ 346,749,227	$ 321,245,457

Approved and authorised for issue by The Ombudsman on 15 May 2009

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The notes on pages 6 to 16 form part of these financial statements.

Cash Flow Statement for The Year Ended 31 March 2009

(Expressed in Hong Kong dollars)

	Note	2009	2008
Operating activities			
Surplus for the year		$ 28,093,659	$ 29,182,584
Adjustments for:			
- Interest income		(8,615,545)	(10,170,894)
- Depreciation		2,188,980	1,932,915
- Amortisation of prepaid operating lease		1,394,220	1,394,220
- Amortisation of Government subventions		(2,965,040)	(2,965,040)
- Loss on disposal of property, plant and equipment		4,431	-
Operating surplus before changes in working capital		$ 20,100,705	$ 19,373,785
Increase in deposits and prepayments		(4,295)	(179,439)
(Decrease)/increase in other payables and accruals		(2,063,995)	2,380,386
Increase in contract gratuity payable		2,439,146	242,245
Net cash generated from operating activities		$ 20,471,561	$ 21,816,977
Investing activities			
Interest received		$ 9,474,279	$ 9,454,537
Purchase of property, plant and equipment		(1,133,186)	(862,179)
Increase in bank deposits with original maturity over three months		(19,987,000)	(31,292,000)
Proceeds from sale of property, plant and equipment		5,768	-
Net cash used in investing activities		$ (11,640,139)	$ (22,699,642)
Increase/(decrease) in cash and cash equivalents		$ 8,831,422	$ (882,665)
Cash and cash equivalents at beginning of the year	9	4,343,179	5,225,844
Cash and cash equivalents at end of the year	9	$ 13,174,601	$ 4,343,179

The notes on pages 6 to 16 form part of these financial statements.

Notes to the Financial Statements

(Expressed in Hong Kong dollars unless otherwise indicated)

1 Status of The Ombudsman

The Ombudsman was established as a corporation by statute on 19 December 2001. The functions of The Ombudsman are prescribed by The Ombudsman Ordinance.
The address of its registered office is 30/F, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong.

2 Significant accounting policies

(a) *Statement of compliance*

These financial statements have been prepared in accordance with all applicable Hong Kong Financial Reporting Standards ("HKFRSs"), which collective term includes all applicable individual Hong Kong Financial Reporting Standards, Hong Kong Accounting Standards ("HKASs") and Interpretations issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA"), accounting principles generally accepted in Hong Kong. A summary of the significant accounting policies adopted by The Ombudsman is set out below.

The HKICPA has issued a number of new and revised HKFRSs that are first effective or available for early adoption for the current accounting period of The Ombudsman. The adoption of the new and revised HKFRSs did not result in significant changes to The Ombudsman's accounting policies applied in these financial statements for the years presented.

The Ombudsman has not applied any new standard or interpretation that is not yet effective for the current accounting period (see note 15).

(b) *Basis of preparation of the financial statements*

The measurement basis used in the preparation of the financial statements is the historical cost basis.

The preparation of financial statements in conformity with HKFRSs requires management to make judgements, estimates and assumptions that affect the application of policies and reported amounts of assets, liabilities, income and expenditure. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis of making the judgements about carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

2 Significant accounting policies (continued)

(b) Basis of preparation of the financial statements (continued)

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

(c) Property, plant and equipment and depreciation

Property, plant and equipment are stated in the balance sheet at cost less accumulated depreciation and impairment losses (see note 2(e)).

Depreciation is calculated to write off the cost of items of property, plant and equipment less their estimated residual value, if any, using the straight-line method over their estimated useful lives as follows:

Leasehold improvements	10 years
Building	40 years
Office equipment	5 years
Office furniture	5 years
Computer equipment	4 years
Motor vehicles	5 years

Both the useful life of an asset and its residual value, if any, are reviewed annually.

Gains or losses arising from the retirement or disposal of an item of property, plant and equipment are determined as the difference between the net disposal proceeds and the carrying amount of the item and are recognised in the statement of income and expenditure on the date of retirement of disposal.

(d) Operating leases

Leases where substantially all the risks and rewards of ownership of assets remain with the lessor are accounted for as operating leases. Payments made under operating leases net of any incentives received from the lessor are charged to the statement of income and expenditure on a straight-line basis over the accounting periods covered by the lease term.

2 Significant accounting policies (continued)

(e) *Impairment of assets*

Internal and external sources of information are reviewed at each balance sheet date to identify indications that the property, plant and equipment may be impaired or an impairment loss previously recognised no longer exists or may have decreased.

If any such indication exists, the property, plant and equipment's recoverable amount is estimated. An impairment loss is recognised whenever the carrying amount of an asset exceeds its recoverable amount.

(i) Calculation of recoverable amount

The recoverable amount of a property, plant and equipment is the greater of its net selling price and value in use. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of time value of money and the risks specific to the asset. Where the property, plant and equipment do not generate cash inflows largely independent of those from other assets, the recoverable amount is determined for the smallest group of assets that generates cash inflows independently (i.e. a cash-generating unit).

(ii) Reversals of impairment losses

An impairment loss is reversed if there has been a change in the estimates used to determine the recoverable amount.

A reversal of impairment losses is limited to the asset's carrying amount that would have been determined had no impairment loss been recognised in prior years. Reversals of impairment losses are credited to the statement of income and expenditure in the year in which the reversals are recognised.

(f) *Other payable and accruals*

Other payable and accruals are initially recognised at fair value and thereafter stated at amortised cost unless the effect of discounting would be immaterial, in which case they are stated at cost.

(g) *Employee benefits*

Salaries, gratuities, paid annual leave, leave passage and the cost to The Ombudsman of non-monetary benefits are accrued in the year in which the associated services are rendered by employees of The Ombudsman. Where payment or settlement is deferred and the effect would be material, these amounts are stated at their present values.

Contributions to Mandatory Provident Funds as required under the Hong Kong Mandatory Provident Fund Schemes Ordinance are recognised as an expenditure in the statement of income and expenditure as incurred.

2 Significant accounting policies (continued)

(h) Provisions and contingent liabilities

Provisions are recognised for liabilities of uncertain timing or amount when The Ombudsman has a legal or constructive obligation arising as a result of a past event, it is probable that an outflow of economic benefits will be required to settle the obligation and a reliable estimate can be made. Where the time value of money is material, provisions are stated at the present value of the expenditure expected to settle the obligation.

Where it is not probable that an outflow of economic benefits will be required, or the amount cannot be estimated reliably, the obligation is disclosed as a contingent liability, unless the probability of outflow of economic benefits is remote. Possible obligations, whose existence will only be confirmed by the occurrence or non-occurrence of one or more future events are also disclosed as contingent liabilities unless the probability of outflow of economic benefits is remote.

(i) Government grants

Grants from the government are recognised at their fair value where there is a reasonable assurance that the grant will be received and The Ombudsman will comply with attached conditions.

Government grants relating to costs are deferred and recognised in the statement of income and expenditure over the period necessary to match them with the costs that they are intended to compensate.

Government grants relating to property, plant and equipment are included in liabilities as deferred government subventions and are credited to the statement of income and expenditure on a straight-line basis over the expected lives of the related assets.

(j) Income recognition

Provided it is probable that the economic benefits will flow to The Ombudsman and the income and expenditure, if applicable, can be measured reliably, income is recognised in the statement of income and expenditure as follows:

(i) Government subventions
Government subventions are accounted for on an accrual basis in accordance with note 2(i).

(ii) Interest income
Interest income is recognised as it accrues using the effective interest method.

(iii) Other income
Other income is recognised on an accrual basis.

2 Significant accounting policies (continued)

(k) Related parties

For the purposes of these financial statements, a party is considered to be related to The Ombudsman if:

(i) the party has the ability, directly or indirectly through one or more intermediaries, to control The Ombudsman or exercise significant influence over The Ombudsman in making financial and operating policy decisions, or has joint control over The Ombudsman;

(ii) The Ombudsman and the party are subject to common control;

(iii) the party is a member of key management personnel of The Ombudsman or The Ombudsman's parent, or a close family member of such an individual, or is an entity under the control, joint control or significant influence of such individuals;

(iv) the party is a close family member of a party referred to in (i) or is an entity under the control, joint control or significant influence of such individuals; or

(v) the party is a post-employment benefit plan which is for the benefit of employees of The Ombudsman or of any entity that is a related party of The Ombudsman.

Close family members of an individual are those family members who may be expected to influence, or be influenced by, that individual in their dealings with the entity.

3 Government subventions/amortisation of Government subventions

Government subventions represent the funds granted by the Government for the daily operations of The Ombudsman. Amortisation of Government subventions represents the funds granted by the Government for prepaid operating lease payments, the purchase of buildings and certain leasehold improvements. Subvention income is recognised on a straight line basis over the period of the lease term or the useful life of the assets, which are estimated to be 54 years, 40 years and 10 years, respectively.

	2009	*2008*
Government subventions	$ 82,807,481	$ 85,772,521
Current portion of government subventions	(2,965,040)	(2,965,044)
	$ 79,842,441	$ 82,807,477

4 Operating expenses

	2009	2008
Employee benefit expense (note 5)	$ 63,554,087	$ 54,766,024
Depreciation of property, plant and equipment	2,188,980	1,932,915
Rates and management fee	2,099,276	1,887,727
Amortisation of prepaid operating lease	1,394,220	1,394,220
Operating lease rentals in respect of parking spaces	91,200	91,200
Auditor's remuneration	46,000	42,000
Announcement of public interest expense	-	2,376,627
Other expenses	3,152,917	3,126,673
Total	$ 72,526,680	$ 65,617,386

5 Employee benefit expense

	2009	2008
Salaries and allowances	$ 55,571,298	$ 47,685,656
Contract gratuity	5,783,584	4,999,970
Pension costs - MPF scheme	1,119,384	1,008,457
Unutilised annual leave	79,909	274,849
Other employee benefit expenses	999,912	797,092
	$ 63,554,087	$ 54,766,024

6 Key management compensation

	2009	2008
Short-term employee benefits	$ 11,583,458	$ 10,908,063
Post-employment benefits	1,595,352	1,485,201
	$ 13,178,810	$ 12,393,264

7 Property, plant and equipment

	Building	Leasehold improvements	Office furniture	Office equipment	Computer equipment	Motor vehicles	Total
Cost:							
At 1 April 2007	$ 16,800,000	$ 11,549,080	$ 11,371	$ 181,317	$ 1,055,702	$ 1	$ 29,597,471
Additions	-	-	60,452	331,214	470,513	-	862,179
At 31 March 2008	$ 16,800,000	$ 11,549,080	$ 71,823	$ 512,531	$ 1,526,215	$ 1	$ 30,459,650
Accumulated depreciation:							
At 1 April 2007	$ 2,122,438	$ 5,262,981	$ 1,400	$ 44,423	$ 96,896	$ -	$ 7,528,138
Depreciation	420,000	1,154,908	6,863	54,478	296,666	-	1,932,915
At 31 March 2008	$ 2,542,438	$ 6,417,889	$ 8,263	$ 98,901	$ 393,562	$ -	$ 9,461,053
Net book value:							
At 31 March 2008	$ 14,257,562	$ 5,131,191	$ 63,560	$ 413,630	$ 1,132,653	$ 1	$ 20,998,597

	Building	Leasehold improvements	Office furniture	Office equipment	Computer equipment	Motor vehicles	Total
Cost:							
At 1 April 2008	$ 16,800,000	$ 11,549,080	$ 71,823	$ 512,531	$ 1,526,215	$ 1	$ 30,459,650
Additions	-	22,755	380,409	194,744	535,278	-	1,133,186
Disposals	-	-	(9,454)	(3,500)	(885)	-	(13,839)
At 31 March 2009	$ 16,800,000	$ 11,571,835	$ 442,778	$ 703,775	$ 2,060,608	$ 1	$ 31,578,997
Accumulated depreciation:							
At 1 April 2008	$ 2,542,438	$ 6,417,889	$ 8,263	$ 98,901	$ 393,562	$ -	$ 9,461,053
Charge for the year	420,000	1,156,554	43,187	121,495	447,744	-	2,188,980
Written back on disposal	-	-	(1,668)	(1,487)	(485)	-	(3,640)
At 31 March 2009	$ 2,962,438	$ 7,574,443	$ 49,782	$ 218,909	$ 840,821	$ -	$ 11,646,393
Net book value:							
At 31 March 2009	$ 13,837,562	$ 3,997,392	$ 392,996	$ 484,866	$ 1,219,787	$ 1	$ 19,932,604

8 Prepaid operating leases

The Ombudsman's interests in leasehold land represent prepaid operating lease payments and their net book values are analysed as follows:

	2009	2008
In Hong Kong held on		
- Leases of over 50 years	$ 65,019,296	$ 66,413,516
	==========	==========

9 Cash and cash equivalents

	2009	2008
Cash at bank	$ 13,169,601	$ 4,338,179
Cash in hand	5,000	5,000
	$ 13,174,601	$ 4,343,179
	==========	==========

10 Contract gratuity payable

The amount represents the gratuity payable to staff on expiry of their employment contract. The amount of gratuity ranges from 10% to 25% of the basic salary less employer's contributions to Mandatory Provident Fund.

11 Taxation

The Ombudsman is exempt from taxation in respect of the Inland Revenue Ordinance in accordance with the Schedule 1A Section 5(1) of the Ombudsman Ordinance.

12 Commitments

(a) Capital commitments outstanding at 31 March 2009 not provided for in the financial statements were as follows:

	2009	2008
Contracted for	$ 132,838	$ -
	==========	==========

(b) At 31 March 2009, the total future aggregate minimum lease payments under non-cancellable operating leases in respect of parking spaces are payable as follows:

	2009	2008
Within 1 year	$ 7,600	$ 7,600
	==========	==========

13 Management of accumulated funds

The Ombudsman's primary objectives when managing its accumulated funds are to safeguard The Ombudsman's ability to continue as a going concern. The Ombudsman is not subject to externally imposed requirements relating to its accumulated funds.

14 Financial instruments

Risk management is carried out by the accounting department under policies approved by The Ombudsman. The accounting department identifies and evaluates financial risks in close co-operation with the operating units. The Ombudsman provides written principles for overall risk management such as interest-rate risk, use of financial instruments and investing excess liquidity.

The Ombudsman's activities do not expose it to significant foreign exchange risk, credit risk and liquidity risk. Except for the short-term fixed rate bank deposits which bear interests at the rates not substantially different from market rates, The Ombudsman has no other significant interest-bearing assets and liabilities. Accordingly, The Ombudsman's income and operating cash flows are substantially independent of changes in market interest rates and the exposure to cash flow and fair value interest rate risk is considered to be low.

(a) Credit risk

On 14 October 2008, the Government announced the use of the exchange fund to immediately guarantee repayment of all customer deposits held with authorized institutions in Hong Kong Special Administrative Region ("HKSAR") (which cover licensed banks in HKSAR, among others, and include HKSAR branches of overseas institutions) following the principles of the Deposit Protection Scheme, until the end of 2010. The bank balances of The Ombudsman are kept in the said authorized institutions and are therefore protected under the said scheme.

(b) Liquidity risk

The Ombudsman's policy is to regularly monitor current and expected liquidity requirements and to ensure that it maintains sufficient reserves of cash to meet its liquidity requirements in the short and longer term.

14 Financial instruments (continued)

(b) *Liquidity risk (continued)*

The following table details the remaining contractual maturities at the balance sheet date of The Ombudsman's financial liabilities, which are based on contractual undiscounted cash flows and the earliest date The Ombudsman can be required to pay:

	2009				
	Carrying amount	*Total contractual undiscounted cash flow*	*Within 1 year or on demand*	*More than 1 year but less than 2 years*	*More than 2 years but less than 5 years*
Contract gratuity payable	$ 8,839,335	$ (8,839,335)	$ (5,406,467)	$ (2,685,064)	$ (747,804)
Other payables and accruals	1,611,944	(1,611,944)	(1,611,944)	-	-
	$ 10,451,279	$ (10,451,279)	$ (7,018,411)	$ (2,685,064)	$ (747,804)

	2008				
	Carrying amount	*Total contractual undiscounted cash flow*	*Within 1 year or on demand*	*More than 1 year but less than 2 years*	*More than 2 years but less than 5 years*
Contract gratuity payable	$ 6,400,189	$ (6,400,189)	$ (3,018,312)	$ (2,456,974)	$ (924,903)
Other payables and accruals	3,675,939	(3,675,939)	(3,675,939)	-	-
	$ 10,076,128	$ (10,076,128)	$ (6,694,251)	$ (2,456,974)	$ (924,903)

(c) *Sensitivity analysis*

At 31 March 2009, it is estimated that a general increase/decrease of 100 basis points in interest rates, with all other variables held constant, would increase/decrease The Ombudsman's income and accumulated funds by approximately $2,573,000 (2008: $2,242,000).

The sensitivity analysis above has been determined assuming that the change in interest rates had occurred at the balance sheet date and had been applied to the exposure to interest rate risk for both derivative and non-derivative financial instruments in existence at that date. The 100 basis point increase or decrease represents management's assessment of a reasonably possible change in interest rates over the period until the next annual balance sheet date. The analysis is performed on the same basis for 2008.

All financial instruments are carried at amounts not materially different from their fair values as at 31 March 2009 and 2008.

15 Possible impact of amendments, new standards and interpretations issued but not yet effective for the year ended 31 March 2009

Up to the date of issue of these financial statements, the HKICPA has issued a number of amendments, new standards and interpretations which are not yet effective for the year ended 31 March 2009 and which have not been adopted in these financial statements.

The Ombudsman is in the process of making an assessment of what the impact of these amendments, new standards and new interpretations is expected to be in the period of initial application. So far it has concluded that while the adoption of these standards may result in new or amended disclosures, it is unlikely to have a significant impact on The Ombudsman's results of operations and financial position.



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